

Winter 2008

UBC | LAW ALUMNI MAGAZINE

Section 35

UBC ALUMNI BRING FORWARD
LANDMARK ABORIGINAL RIGHTS CASES

Walk Gently on the Land

INTIMATE PORTRAITS OF ALUMNI
CONTRIBUTORS TO ABORIGINAL LAW
IN CANADA



THE
UNIVERSITY OF
BRITISH
COLUMBIA

Morris
Taku River
Hingit First Nation
Haida Nation
Powley
Delgamuukw
Jones Gladstone
Blueberry River
Indian Band
NTC Smokehouse
Van der Peet
Sparrow
Calder Guerin

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In 1982, the Canadian Constitution was amended to recognize and affirm existing Aboriginal rights. Over the past quarter century, UBC Law faculty and alumni have been frontline participants in the process of defining Aboriginal rights through the Canadian courts.



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INTIMATE PORTRAITS OF ALUMNI CONTRIBUTORS TO ABORIGINAL LAW IN CANADA

UBC Law alumni are associated with some of the most important and ground-breaking Aboriginal law cases in Canadian legal history. Meet nine individuals who are as unique and complex as the cases they have tackled.

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MESSAGE *from the Dean*

Greetings from UBC Law and welcome to the fifth edition of the *UBC Law Alumni Magazine*.

The 2007-08 academic year had a strong start. We welcomed three new Assistant Professors—Fiona Kelly, Benjamin Perrin, and Sharon Sutherland (who previously served as an Instructor). We greatly benefited from the addition of John Kleefeld as a new Lecturer and Director of our Legal Research and Writing Program. Finally, our community was strengthened by the addition of approximately 200 of the best law students in Canada, drawn from a wide range of undergraduate institutions and disciplines, along with another outstanding class of LL.M. and Ph.D. students from across Canada and around the world. These new students (and, we hope, future alumni) will benefit from our new curriculum and well as from the contributions of hundreds of adjunct faculty members, moot court coaches and judges, mentors, and other volunteers. Thank you to these adjunct faculty members and volunteers.

As you read this issue, many around you may be working to fulfill (or to forget) their New Year's resolutions. It therefore seems fitting to focus on what might be thought of as one particularly enduring UBC Law resolution. This consistent theme, found in the Latin inscription over the door of the school, is *Fiat Justitia, Ruat Coelum*, or, roughly, "let justice be done though the heavens fall." This issue of the *UBC Law Alumni Magazine* explores that theme in one key area: the development of Aboriginal rights in Canada.



This issue recognizes both an important historical milestone—the 25th anniversary of the inclusion of Section 35 (s. 35) into the 1982-enacted Canadian Constitution—and the special role of British Columbia in giving meaning to the Section's provisions. Our cover story takes readers on a journey that explores some of the key Aboriginal rights cases heard by the Supreme Court of Canada over the past 25 years from the perspective of some of the UBC Law alumni who have shaped their outcomes. We are honoured that so many of the key participants have agreed to share their experiences on these leading cases, allowing us to tell the story of s. 35 from its inclusion in the Constitution to the present day. Also in this issue, you will find the personal stories of a handful of the many alumni who have been active in all aspects of the development of Aboriginal law in BC, representing all sides of disputes. These personal stories bring to life the cases outlined in the cover story, and tell of professional and personal growth. For UBC Law, this issue reflects our graduates' personal and professional commitment to justice. We are proud that UBC Law was one of the first faculties in Canada to offer a program in First Nations Legal Studies and Aboriginal law and that we remain a leader in First Nations legal education in North America.

So many UBC Law alumni have dedicated their professional lives to making the world a better place. We hope this issue of the Law Alumni magazine is the first among many efforts to chart the contributions of our graduates to the promotion of Justice in Canada and beyond.

Among our many other New Year's resolutions, we hope to continue to improve our communications with you, our graduates and friends. We encourage you to contact us and share your stories with us. Feedback is always welcome; your comments and ideas can be sent to alumnieditor@law.ubc.ca.

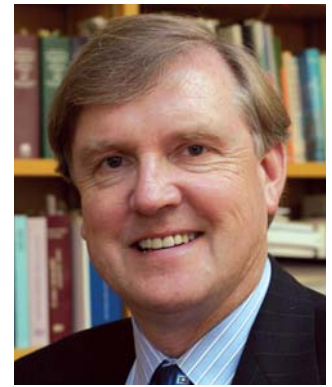
Warm regards,

A handwritten signature in black ink that reads "M. Bobinski". The signature is fluid and cursive.

MARY ANNE BOBINSKI

Dean, UBC Faculty of Law

MESSAGE *from the* UBC Law Alumni Association President



Once again, greetings on behalf of the Board of Directors of the UBC Law Alumni Association.

The reputation of UBC Law depends on the collective activities and accomplishments of its present and former students, and its present and former faculty members. As such, we all play an important part in establishing and expanding the reputation of the law school. However, one of the most significant elements in positively positioning the school is the leadership of the Dean. I know this from personal experience.

On behalf of the UBC Law Alumni Association, I would like to recognize the many steps that Dean Mary Anne Bobinski has taken to maintain and enhance the excellent reputation of the UBC Faculty of Law. She works tirelessly to improve all aspects of the Faculty. In her four years as Dean, she has overseen the introduction of a revised curriculum, has recruited top flight professors to continue the school's teaching and research excellence and significantly enhanced student aid funding (both need- and merit-based). The Dean has also taken steps to improve the physical plant by installing new furniture in the Interaction Area, renovating Candida's (the student dining area) and providing better access for persons with mobility impairment to classrooms and faculty offices. Under her leadership, UBC Law is a place that continues to attract the best students in Canada. Of particular importance is the improved connection she has fostered with alumni through a vastly improved communications program that includes monthly newsletters and this semi-annual magazine.

While UBC Law depends on its students and faculty, past and present, for the heart of its reputation, the significance of the building in which the activities of the law school take place cannot be overstated. The possibility of a new building has been on everyone's agenda for a number of years and now it appears that it will become a reality. From the perspective of the alumni, the most significant contribution made by Dean Bobinski may well prove to be the successful campaign that she is leading to build a new home for the law school.

The current building is the site of memories for all of us, and those memories are enduring and meaningful. The law school should be a place to which alumni will want to return, to which the best students and teachers will want to come and to which visitors from around the world will be attracted. Dean Bobinski recognizes the importance of establishing a building that meets the needs of students and faculty for an environment where first-class teaching, collaborative learning and faculty research can take place, and which recognizes the accomplishments and contributions of the students, professors, lawyers and law firms whose professional careers are connected with UBC Law.

The UBC Law Alumni Association is delighted with the steps that Dean Bobinski has taken to create a law building the quality of which will match the quality of the faculty and students who have attended UBC over the years.

By the time this issue is produced, you will have heard our fall speaker, and nominated some of the people who should be recognized in our 2008 UBC Law Alumni Achievement Awards. Nominations are in the categories of Lifetime Achievement Award, Alumni Award of Distinction, Alumni Award for Research and Outstanding Young Alumnus or Alumna Award.

May I encourage you to continue to read and make contributions to this magazine, and in particular to Class Notes. I also encourage you to participate in the affairs of the Alumni Association. The current members of the Board are as follows:

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Toireasa Jespersion	

Once again, please get involved. For more information, and to keep up to date, check out our website at <http://www.law.ubc.ca/alumni>. The Board meets every six weeks and we invite you to attend board meetings and participate.

The UBC Law Alumni Association, and the staff and faculty of the law school who support its activities, are pleased to assist you in any way possible, particularly with reunions and alumni gatherings or by profiling important alumni achievements and events. We look forward to hearing from you.

A handwritten signature in black ink, which appears to read "Jon Sigurdson". The signature is fluid and cursive.

THE HONOURABLE JON SIGURDSON
President, UBC Law Alumni Association

SECTION 35

UBC ALUMNI
Bring Forward
Landmark
Aboriginal Rights Cases

by Jean R. Sorensen





Milestones

Aboriginal rights in Canada reached an historical milestone in 2007. April 17 marked the 25th anniversary of the inclusion of Section 35 (s.35) in the 1982-enacted Canadian Constitution, which recognized and affirmed the Aboriginal and treaty rights of Aboriginal peoples. British Columbia is widely recognized for bringing forward more definitive cases expressing those s.35 Aboriginal rights than any other Canadian province, even in the decades preceding the adoption of the *Canadian Charter of Rights and Freedoms*. But determining what s.35 means has led to a quarter century of long, hard-fought cases landing before the Supreme Court of Canada (SCC) for interpretation.

Many critical legal battles were waged and won by University of British Columbia law faculty and alumni. In the vanguard—on all sides of the issue—are prominent UBC Law alumni such as the Honourable Thomas Berger, OC, OBC, QC, who fought for Aboriginal rights prior to their constitutional inclusion, Patrick Foy, QC, well-known for representing third-party interests and Marvin Storrow, QC, who brought forward the first test cases. Their dedicated work has been integral to the legal interpretations of Aboriginal and treaty rights of Aboriginal peoples as we know them today.

The challenging task of interpreting s.35 is far from complete, however. Next year, Louise Mandell, QC, will further the process when she takes *HMTQ BC v. Wilson (the Okanagan Indian Band et al.)* into court and asks the provincial government to prove it has right of ownership and jurisdiction over forest lands in the Nation's traditional territory. "It will be a landmark case," predicts Mandell, who has been involved in BC Aboriginal law cases for more than 30 years. The case builds upon a complex body of case law brought forward by her alumni peers leading up to s.35 and flowing from its inclusion in the Constitution. It also represents another critical step in a rigorous legal journey that continues to shape Canada's political and legal landscape.



Rap of a Cane and a Time of Change

“When I went to law school in the mid-1950s, no one talked about the rights of Aboriginal people,” recalls the Honourable Thomas Berger, QC, who has worked more than 40 years to affirm Aboriginal rights. “The idea that they had rights or title died in the 19th century.”

For Berger, awareness of those rights came with the sharp rap of a cane on his criminal law office desk in 1963. Maisie Hurley, widow of late veteran lawyer Tom Hurley (known for defending Aboriginal peoples in criminal law matters and occasionally drawing Berger into cases) arrived at his office shortly after Hurley’s death. A tall, commanding woman, she was a fierce defender of Aboriginal people’s rights at a time when they were marginalized. Berger recalls that she “smacked the cane” on his desk and said—“Now, Tommy, you will have to defend the Indians.”

That first case involved two Nanaimo First Nations men, Clifford White and David Bob, charged for shooting deer out of season. The men paid fines, but wanted a new trial. Berger had little experience in Aboriginal matters but with a new practice and few clients, he set off to Nanaimo.

Berger met the band council and elders, who maintained that their ancestral treaty provided traditional hunting and fishing rights. Berger was interested. BC was considered to have no treaties except Treaty No. 8, an overlap from Alberta. He found documents, but they appeared to be nothing more than 13 land conveyance agreements between Vancouver Island First Nations groups and Governor James Douglas, who also served as the Hudson Bay Company’s chief factor. Closer scrutiny, however, revealed the land was transferred to the Crown, not the HBC. Berger’s case stalled when he found the document for the 1854 signing of the Nanaimo band treaty was virtually blank. No treaty terms existed on the paper but each male Aboriginal person had simply signed an X.

PART II OF THE VII PART CONSTITUTION ACT OF 1982: RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA

Recognition of existing
Aboriginal and treaty rights

Definition of “Aboriginal
peoples of Canada”

Land claims agreements

Aboriginal and treaty rights are
guaranteed equally to both sexes

35.

- (1) The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada hereby are recognized and affirmed.
- (2) In this Act, “Aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.
- (3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.
- (4) Notwithstanding any other provision of this Act, the Aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Commitment to participation
in constitutional conference

35.1

- The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the “*Constitution Act, 1867*”, to section 25 of this Act or to this Part,
- (a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and
 - (b) the Prime Minister of Canada will invite representatives of the Aboriginal peoples of Canada to participate in the discussions on that item.

S. 35

As outlined in Berger's book, *One Man's Justice*, investigation revealed that Douglas would transfer the Crown's wording onto the document after band members signed their X. That wording enshrined band hunting and fishing rights. For some unknown reason, that wording was never copied to the 1854 document after the parties signed. Berger won *R. v. White and Bob* [1965] in which the SCC ruled the blank document was intended to be a treaty, bringing the number of "Douglas treaties" to 14, not 13 as originally thought.

"It was the first case in decades that put the issue of Aboriginal rights front and centre before the public," says Berger. "It was also the beginning of a reassessing of the position of Aboriginals before the law."

First Nations leaders possessed a strong but unheeded voice; hitherto the ruling meant society could no longer choose not to listen.

One voice in particular caught Berger's attention in 1967, a year after his election to the BC Legislature. It belonged to MLA Frank Calder, president of the Northeastern BC-based Nisga'a Tribal Council in the Nass Valley and the first Aboriginal MLA.

"The Nisga'a wanted to bring a lawsuit to establish Aboriginal title to their lands," Berger tells. Calder maintained that the Nisga'a had never given any rights to government for title to their lands. The case raised the question: Did the First Nations people still have rights to their lands or had Confederation extinguished those rights?

Berger took the case to trial and lost. He lost again on appeal, but then the SCC rendered a split decision on *Calder v. the Attorney General of British Columbia* [1973]. Three Justices decided the Nisga'a retained rights and three ruled those rights had been extinguished. The seventh Justice dismissed the appeal on a procedural point. "The SCC decision in 1973



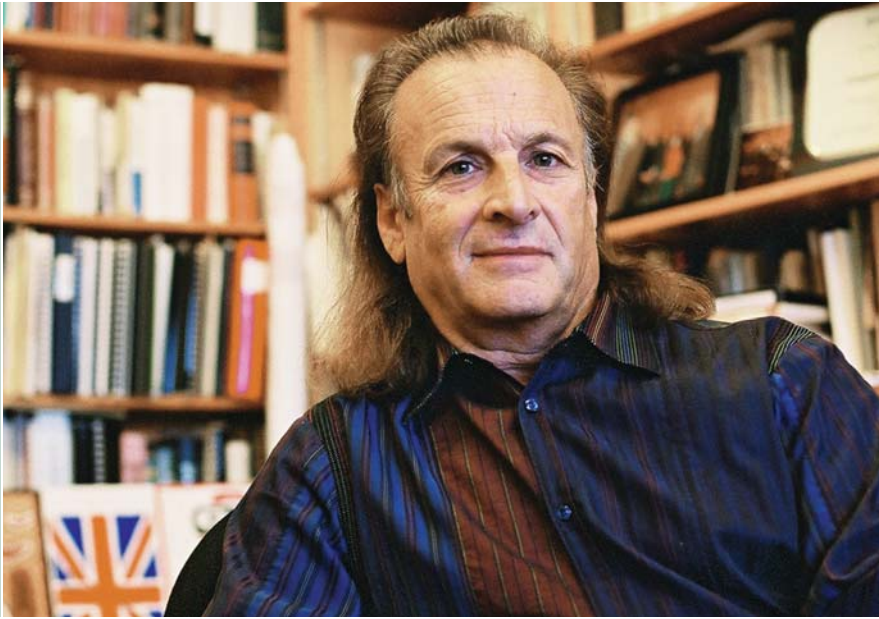
The Honourable
Thomas Berger, QC

went against the Nisga'a," Berger says, "but six of seven judges recognized the concept of Aboriginal title in Canadian law." The decision launched the process for the Nisga'a Treaty in BC, creating a ripple effect across Canada.

"The *Calder* case led to the adoption of a policy for the settlement of land claims by the government of Canada," says Berger. Shortly after, Berger ascended to the BC Supreme Court, becoming the youngest judge appointed to that Court in the 20th century.

In 1971 Aboriginal rights were a growing focal point for courts, society and politicians, UBC law professor Michael Jackson, QC, found himself embroiled in the issue by two of his law students. They had obtained a Summer Works Grant at Alert Bay, a short water-taxi ride from Port McNeill on northern Vancouver Island. The pair soon discovered that the bulk of RCMP charges stemmed from apprehending intoxicated First Nations people who didn't have transport home after the bar closed. The students' Volkswagen bus became a free taxi and essentially dried up the week's court docket.

.....
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.....



According to Jackson, the local RCMP sergeant appeared at the students' house, warning them that they were obstructing justice. They called Jackson, and he was plunged into a microcosm of all the judicial ills plaguing First Nations people since the introduction of the *Indian Act*. First Nation leaders described potlatch trials, removal of children into residential schools, loss of traditional lands, inequities of the *Indian Act* and social discrimination. Jackson visited the RCMP suggesting there was no obstruction by his students but rather a crime prevention initiative.

Jackson left the island convinced UBC Law should offer an Aboriginal rights course; then-Dean George Curtis agreed. Jackson also wanted to introduce a second course on prisoners' rights. His colleagues in and outside UBC were skeptical. "Everyone believed that prisoners and Natives had no rights, so they didn't know what I was going to teach," Jackson says. When UBC introduced "Native People and the Law" in 1972 to a packed classroom of 50 students, it was the first such course in a Canadian law school.

Berger and Jackson would join forces in 1974 when then-Prime Minister Pierre Trudeau asked Berger to serve as commissioner of the Mackenzie Valley Pipeline Inquiry. Berger asked Jackson to become special counsel.

The Dene invited Berger to live a year in their northern villages to experience their lifestyle. Instead, Berger asked Jackson to take his family into the area for a summer to learn how the hearings could best express the concerns of the Dene, Métis and Inuit people.

Jackson quickly discovered that meetings in the northern area at that time usually involved a short fly-in and a quick retreat (in the depth of winter, the aircraft was often kept running). Jackson determined how the process could serve the local Nations, whose culture was rooted in oral rather than written history. He provided translators. "The inquiry was a remarkable thing. Both young and old came and spoke in their Native languages," he says, adding the focus was not just on the technical aspects of the pipeline but also on the social impact on the area and how the people lived.

Berger, meanwhile, traveled for two years listening to testimony before issuing a two-volume report in 1977 calling for a 10-year moratorium on construction until the land claims of the Dene, Métis, and Inuit were resolved. His *Northern Homeland, Northern Frontier* became the best-selling report ever published by the Government of Canada. The inquiry further pushed the issue of land claims into the public realm, pressuring the federal government to acknowledge and resolve disputes with Aboriginal peoples.

As the report was garnering headlines, a young Musqueam Band chief was referred to Marvin Storrow, QC, of Davis & Co. Delbert Guerin told Storrow how the band had been forced to surrender 162 acres of reserve land to the Shaughnessy Golf & Country Club in 1957 on a 75-year lease. The lease terms were kept secret from the band until Guerin, as he told Storrow, "obtained a copy of a copy" from a government office 12 years later.

Cumulative rents over 30 years totaled only about \$900,000 on land valued at close to \$1 million an acre. The land was virtually given away. Storrow says the case “cried out to be resolved by the courts, it was so shocking.”

The legal team assembled at Davis, which included Jim Reynolds (a former UBC adjunct law professor) and Lewis Harvey, shared his view. They argued the federal government had a fiduciary duty under the *Indian Act* to protect the band’s interests in a land transaction. The Crown said it was only a “political trust” which could be objected to at the polls. (Storrow points out that First Nation persons on reserves, however, could not vote at the time in a federal election.) The Federal Court sided with the band in July 1981, awarding \$10 million compensation. The Crown went to the Federal Court of Appeal and had the judgment set aside. Storrow appealed to the SCC.

The SCC *Guerin v. The Queen [1984]* ruling determined that the band had the right of title to the reserve lands and that there was a fiduciary obligation by government. (Reynolds published a book on the case entitled *A Breach of Duty: Fiduciary Duties and Aboriginal Peoples* in 2005). Changing lease terms without the band’s consent and attempting to keep the revised document from the band were considered a failure to act in the best interests of the Musqueam. The original \$10 million award was restored.

Storrow says the lease, in place until 2033, is problematic. The \$10 million award “wasn’t nearly enough,” he says, but the case heralded a new dimension of Aboriginal rights and became ranked by the Canadian Bar Association as one of the most important cases in Canadian history.

The *Guerin* case joined the growing number of cases carving out Aboriginal rights in Canada at a time when the country was forging a new constitution. Aboriginal leaders were vocal in affirming those rights and s. 35 was born.

Berger continued to watch the development of s. 35, but just prior to the Constitution’s enactment, Canada’s premiers convinced Prime Minister Trudeau to remove the section. Berger, a BC Supreme Court judge, then did something few judges have done. He publicly criticized the federal government and his voice joined those of “some strong Aboriginal players on the main stage,” he says. The outcry caused Trudeau to reinstate s. 35. In 1982, Aboriginal rights became enshrined across Canada.

Berger paid a price for his outspokenness. Trudeau and SCC Chief Justice Bora Laskin both rebuked him while the Canadian Judicial Council found him guilty of indiscretion. “That led to my resignation in 1983 [from the BC Supreme Court],” he says. Still, he has no regrets. “I spoke out because I thought I could make a difference in restoring s. 35 to the Constitution. If I had not, it is something that I would have regretted all my life.”

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Marvin Storrow, QC

S. 35 Becomes a Case-by-Case Journey

Originally, tells Berger, s. 35's meaning was to be fleshed out in First Minister's meetings. After years of failed talks, the task fell to the courts. "The two great tests of the SCC have been to elucidate the meaning of the *Charter of Rights and Freedoms* and the scope and scale of s. 35 in the constitution," says Berger. "There is not a day that goes by in Canada when s. 35 is not relied upon in our courts."

The opening shot defining rights involved Musqueam band fisherman Ron Sparrow. In 1984, Sparrow was charged with fishing illegally with a 38-fathom-long net, contravening the Department of Fisheries' food fisheries license, which demanded a 25-foot net.

Originally, says Storrow, the band had used 75-fathom long nets. "With a 25-fathom net you would have to stay on the river all day to catch even a few fish." According to Storrow, the net restriction was a punitive measure, rather than a conservation need, imposed by Fisheries officials who suspected band members of selling fish (though no one was ever convicted).

The band asked a legal team headed by Storrow to go to court to test s. 35. "We defended Ron in provincial court and he was found guilty," tells Storrow. The trial judge's view of "existing" rights were those in place by treaty or proclamation. The BC County Court upheld the decision. The tide changed in the BC Court of Appeal with a decision in favour of Sparrow. The Crown appealed to the SCC and in May 1990, the SCC ruled in favour of Sparrow's Aboriginal right to fish.

Storrow explains: "The SCC ruled that if a First Nations individual can prove that his or her First Nation had Aboriginal entitlements which were not extinguished prior to April 17, 1982,

those rights cannot be interfered with by government. That doesn't mean that government can't affect those rights when there is reason to do so, such as the preservation of a resource."

R. v. Sparrow [1990] contained the first judicial test for determining the applicability of s. 35. Did the band have traditional rights? Were they extinguished? The case borrowed from *Guerin*, citing the Crown's fiduciary responsibility to ensure that any restriction was fair and expressed fairly amongst all resource users.

Still, questions remained unanswered. While First Nations people had food, and social and ceremonial fishing rights, what about commercial rights?

The *Van der Peet* trilogy of SCC decisions in 1996 would begin to answer these questions, beginning with a dispute over the sale of salmon. That year, Sto:lo Nation member Dorothy Van der Peet was charged with the illegal sale of 10 salmon for \$50 to a non-Aboriginal person, breaching local fisheries regulations prohibiting the sale or barter of fish caught for food. Van der Peet argued this contravened s. 35 rights. In *R. v. Van der Peet* [1996] the SCC ruled against Van der Peet, finding nothing to support that the Sto:lo had traditionally sold fish prior to sovereignty.

R. v. N.T.C. Smokehouse Ltd. [1996] followed on the heels of *Van der Peet*, and was the next commercial challenge to come before the SCC. Food processor N.T.C. Smokehouse was charged with contravening the Fisheries Act and regulations by purchasing fish—caught under a First Nations food fish license—for resale to a commercial market. The SCC found no proof that Aboriginal rights were culturally entrenched to the extent of selling fish to a commercial processor, and ruled against Smokehouse.

.....

"The two great tests of the SCC have been to elucidate the meaning of the *Charter of Rights and Freedoms* and the scope and scale of s. 35 in the constitution," says Berger. "There is not a day that goes by in Canada when s. 35 is not relied upon in our courts."

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The final trilogy case—*R. v. Gladstone* [1996]—concerned two Heiltsuk band members, Donald Gladstone and William Gladstone, both charged with attempting to sell herring spawn on kelp caught without the proper license. When arrested, one of the men produced a First Nations food fish license permitting the harvesting of 500 pounds. Again, the question became whether s. 35 permitted First Nations individuals to engage in commercial sales.

For Storrow, *Gladstone* was another hard-fought case. To his advantage, expert witness Dr. Barbara Lane unearthed a rare 1840 document in Winnipeg, in which early explorers described passing Bella Bella's Heiltsuk band members with canoes full of spawn on kelp destined for trade. Bartering the roe was part of the band's culture. The SCC ruled that while the government could consider limitations that balanced the band's economic need with conservation, it could not stop the Heiltsuk from selling spawn. *Gladstone* became a landmark case signaling First Nations people could be guaranteed commercial rights under s. 35.

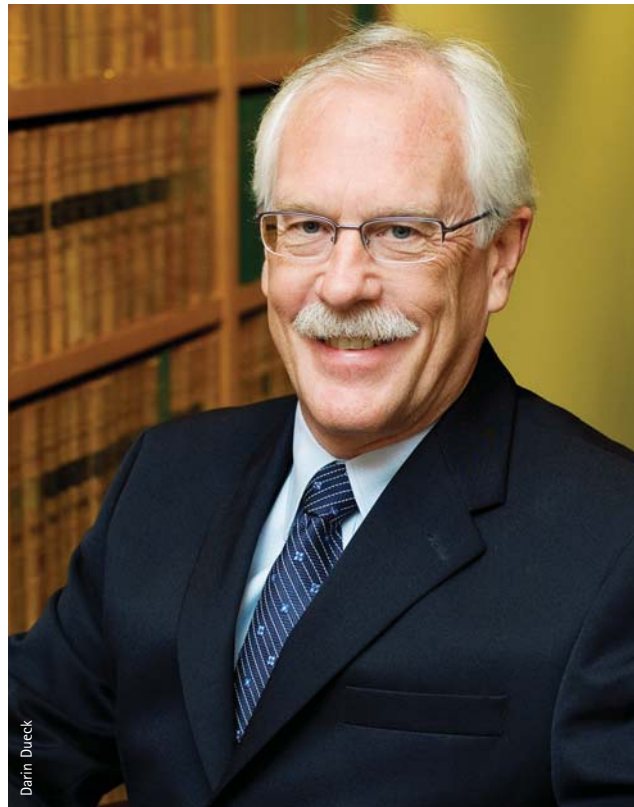
Historical records and documents have not always favoured claims made on behalf of band members, however. Senior appellate counsel Patrick Foy, QC, acted for intervener Canadian National Railway in cases such as *R. v. Lewis*, *R. v. Nikal* and *R. v. N.T.C. Smokehouse*. In these cases, the Court relied upon a number of documents brought forward by the intervener to dismiss band claims to ownership of the bed of rivers fronting their reserve.

In the case of *R. vs. Lewis* [1996], the SCC upheld the conviction of several Squamish band members found guilty of illegal net fishing in the Squamish River near the reserve. The band members maintained that a band bylaw entrenched those fishing rights as set out in Section 81 (1)(o) of the *Indian Act*. The SCC ruled there were no exclusive rights in the area waters and that band bylaws couldn't be used as a defense for a charge under the BC Fishery (General Regulations). The SCC also

noted that the *Indian Act* bylaws related to fishing "on the reserve," interpreted as within the boundaries of the reserve, which the fishing area was not.

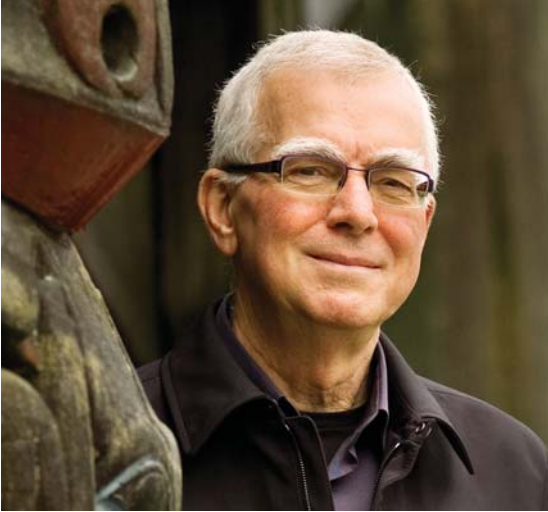
That same year, in *R. v. Nikal* [1996], Jerry Benjamin Nikal was charged with fishing without a license in the Bulkley River adjacent to the reserve. He argued that he needed only comply with the band bylaws, which gave members unrestricted river fishing rights. Once again the SCC ruled, based on historical documents tendered by the intervener, that the band bylaw jurisdiction didn't include the riverbed.

Such pivotal cases raised questions about how the right of entitlement to traditional lands would mesh with land ownership under s. 35. The question became clearer in 1997 when the SCC brought down an historic decision in *Delgamuukw v. The Queen* [1997].



Patrick Foy, QC

Darin Ducek



.....
 SCC rulings were telling
 governments to come to
 the table and not to court.

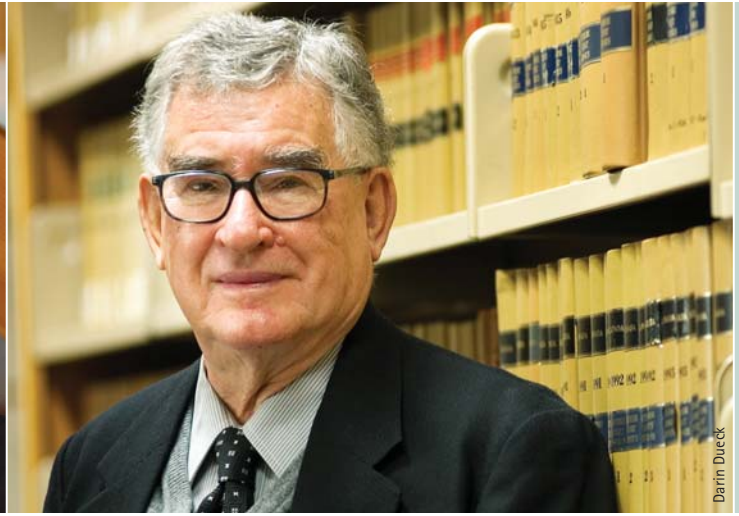
The *Delgamuukw* case was before the courts for thirteen years and was the longest-running civil case in Canadian legal history. UBC Law alumni Stuart Rush, QC, Peter Grant and Louise Mandell, QC, along with Professor Michael Jackson, QC, represented 35 Gitksan and 13 Wet'suwet'en hereditary chiefs who brought forward the action in Northern BC on behalf of the 71 "houses" claiming the rights of ownership and self-governance to 58,000 square kilometres of land. The trial judge Allan McEachern rejected the land claims, followed by a 3-2 split decision in the BC Court of Appeal against the chiefs. On the subsequent appeal to the SCC, Storrow and Joanne Lysyk separately represented the Wet'suwet'en chiefs.

The SCC ruling reversed many of the trial judges' rulings on the nature and tests for proof of Aboriginal title but stopped short of allocating ownership. Instead, it called for a new trial and set out a judicial framework for determining Aboriginal rights to land. It also stated that Aboriginal title to land was actually a legal right to the land, Aboriginal entitlement was held by the collective, not the individual, and that land could not be sold except to the Crown. A Nation's current use was not necessarily bound by historical land use, and if the Crown limited activities, it could be liable for compensation.

Delgamuukw further stated an obligation by the Crown to consult with First Nations groups over land use. Another hallmark of the case was the SCC's willingness to weigh oral history testimony, something lower courts had not previously considered. The ruling's strongest message, however, was that many of these issues were best resolved by Crown-Aboriginal negotiations rather than litigation.

Haida Nation v. British Columbia (Minister of Forests) [2004] deepened the commitment to consult with First Nations, even on lands still under dispute. The band's case, taken to the SCC by Mandell, revolved around timberlands granted to Weyerhaeuser under a tree farm license. Mandell, Jackson, Bruce Ellwood and law alumna Terri-Lynn Williams-Davidson, herself a citizen of the Haida Nation, represented the Haida. The SCC judgement said: "The Crown, acting honourably, cannot cavalierly run roughshod over Aboriginal interests where claims affecting these interests are being seriously pursued in the process of treaty negotiation and proof. The duty to consult and accommodate is part of a process of fair dealing and reconciliation that begins with the assertion of sovereignty and continues beyond formal claims resolution." *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director) [2004]* reaffirmed the Crown's duty to deal fairly.

SCC rulings were telling governments to come to the table and not to court.



Darin Ducek

Negotiating a New Path

“During the past 25 years, s. 35 has been very actively litigated with some very important cases decided in the SCC,” says the Honourable Douglas Lambert, retired BC Court of Appeal Justice and 27-year veteran of the bench. That many BC cases required SCC resolution is not unusual, he says, pointing to BC’s 1978-enacted *Family Relations Act* where between 1979-80 “a huge number of cases went to the SCC.” Decisions in these cases guided the Act’s interpretation and fewer cases now need an SCC decision. The past 25 years have been a period of “reconciliation,” says Lambert, where Canadian law has had to adapt to and recognize changes initiated by s. 35.

Lambert became known for the number of Aboriginal cases he heard and for an often dissenting opinion that supported Aboriginal rights in cases such as *Gladstone*, *Delgamuukw*, *Smokehouse*, *Van der Peet*, *Haida* and *Morris*. According to Lambert, a significant challenge faced by judges was how to reconcile Crown sovereignty and Aboriginal rights fairly on issues that had languished for over 100 years. “Many judges of my generation worried that too much time had passed. Should you reverse the events of the last 100 years?”

In his decision-making, Lambert says he considered not so much the time or predominant

social views. “As a judge, you worry about what the law is and what the facts are,” he says.

Lambert, now in private practice specializing in Aboriginal law, says the SCC decisions definitively shaped s. 35’s meaning. But litigation is costly, lengthy and not always conclusive. “It’s not all points that are argued, and new points arise that no one has ever argued,” he says. Lambert, in his decisions, was one of the first judges to urge greater negotiations between parties.

Today, there is a maturing within consensus groups, Lambert says, adding that the BC government is taking a leadership role in land claims talks and inclusion of First Nations in decision-making through the “New Relationship” initiative. This new initiative was conceived in 2005 through consultation between the Province, representatives of the First Nations Summit, the Union of BC Indian Chiefs and the BC Assembly of First Nations.

Reynolds agrees progress is being made, primarily through agreements that share wealth with First Nations. In 2005, the Musqueam Band agreed to drop litigation against the federal government’s decision to transfer land to its Canada Land Company. Instead, they divided the lands, valued at \$9.54 million, with half to Richmond for municipal use and the other half going to CLC and the Musqueam for a joint venture.

Today, there is a maturing within consensus groups, Lambert says, adding that the BC government is taking a leadership role in land claims talks and inclusion of First Nations in decision-making through the “New Relationship” initiative.

Justice Slade, who represented interests of the Squamish Nation band and later the National Indian Brotherhood/Assembly of First Nations early in his career, believes more cases will come before the courts before a definition of s. 35's right of self-government is realized.

Another settlement Reynolds acted on for the Musqueam Band involved the UBC Golf Course lands. The band deal saw the successful transfer of over 200 acres of land near the reserve—including the UBC Golf Course lands—and payment of \$20 million. Reynolds says such agreements, backed by SCC decisions, are enriching and enhancing the vitality of bands today. Instead of fighting to prevent the erosion of their land base, First Nations are using new tools such as treaties and out-of-court settlements to recapture that land right. “It is a turning point in their post-contact history,” says Reynolds. “I believe we are going to see more cases like this that are successfully mediated or negotiated.”

The impact of failing to negotiate can be staggering. The case of *Roger William v. HMQ BC, AG Canada* (regarding Aboriginal title over cutting rights infringing upon a registered trap line) ended in the BC Supreme Court with a decision in late 2007. Court records state: “The trial ... has only just concluded after 339 hearing days. The costs have been enormous ... just the claimed disbursements that arise after June 1, 2004 total about \$2.7 million, which gives some insight into the magnitude of the overall cost of the case.”

In *HMTQ BC v. Wilson*, the provincial Crown charged members of the Okanagan Band with unauthorized logging in an area known as Brown's Creek in 1999. That case, says Lambert, “has already taken eight years to come before a judge and it has not yet started trial.”

Third-party interests are also aware of the pitfalls of failing to reach a negotiated agreement out of court, says Foy, who is recognized for representing third parties. The current body of litigation assists all sides in defining the “scope” and “extent of rights” between First Nations, third parties and government. “Increasingly, the credible First Nations leadership and third parties are inclined to negotiate,” he says, adding litigation today is really “a tool of last resort.”

But he says, “I don't think litigation will ever go away.”

New Questions Leading to Test Cases

BC's Mr. Justice Harry Slade sees s. 35's right of self-government as a major unresolved issue for Aboriginal people, although it is going through a “building block process” within court cases. “But it is generally recognized that there are still undefined inherent rights of self-government,” he says.

One critical case is Ontario's *R. v. Pamajewon [1996]*, involving members of the Shawanaga and Eagle Lake First Nations, operating high-stakes gambling and bingo outfits on reserve lands without a provincial permit and contrary to pertaining sections of the Canadian Criminal Code. The SCC heard arguments that the Code provision infringed upon the Aboriginal rights as set out in s. 35 (1) of the Constitution, but ruled that the same tests that were used in *Van der Peet* to gauge the validity of Aboriginal rights should be used in *Pamajewon*. The SCC dismissed the appeal after deciding that the Aboriginal group did not have entrenched historical rights to carry out gambling activities on their reserve areas.

Justice Slade, who represented interests of the Squamish Nation band and later the National Indian Brotherhood/Assembly of First Nations early in his career, believes more cases will come before the courts before a definition of s. 35's right of self-government is realized.

Aboriginal self-government issues prior to 1982 were “in their infancy.” The federal government, which had jurisdiction over First Nations activities, often guided legal decision, thus restricting self-government. He remembers as a lawyer handling a case regarding the right of a band to enforce a trespass bylaw. “The federal government intervened and opposed the client's claim of a right to sue and enforce its bylaws,” he tells, as the Crown believed only it had the right to initiate action. “Bands at that time—and in a sense still—have delegated law-making under the *Indian Act*.”



Jim Reynolds



Mr. Justice Harry Slade

How those delegated powers to self-determination—whether by statute or courts—will play out in court remains to be seen.

Justice Slade points out that past SCC decisions have not entrenched Aboriginal rights as absolute or holding veto powers over other Canadian laws, but have repeatedly indicated that Aboriginal interests exist in a way that reconciles them with other Canadian interests.

He feels, though, that as much will be gained from negotiating self-governance as from litigation. “It only makes sense the preferred way is to have a definition of those rights and then have the reconciliation of those rights and interests of others in the community defined through negotiations.”

There remains one last, looming question that is headed to court as a test case under s. 35: Can First Nations lay claim to direct ownership of traditional lands beyond the scope set out in *Delgamuukw*?

The court case that moves forward to challenge the right of ownership will be an interesting one, says Storrow, who did not quite see the resolution he wanted on *Delgamuukw*.

Such a challenge questions the validity of a province’s real estate and land registry system, especially since “provincial legislation has not extinguished an Aboriginal right.”

Mandell’s *Wilson* case aims to answer part of that question. It will be the first BC case to address First Nations timber harvesting rights and edges toward what remains a looming question in BC today. If no treaties were signed governing much of BC, and a First Nation’s right to land has not been extinguished, then who owns the land and resources? “The provincial government in this case has raised an important question,” says Mandell. “The Crown is claiming it owns timber, but how are they going to prove it?”

The Crown argued in the *Delgamuukw*, *Calder* and *Haida* cases that Aboriginal title was extinguished and the SCC repeatedly disagreed. “So, how did the Crown get control of the lands?” she asks. Much will be based on history, bringing Mandell’s case almost full circle back to that of Berger’s *White and Bob* and *Nisga’a* cases contested over 40 years ago.

Mandell is convinced the case will lead to another landmark ruling, essentially reversing the constant burden on First Nations to prove they have rights to a case and instead placing that onus on the Crown.

“It’s about going into court to answer these questions,” she says.

1973
NISGA'A OR CALDER CASE
[1973] S.C.R. 313

For the Nisga'a appellant, the Honourable Thomas Berger, QC, OBC, QC ('56) and Donald J. Rosenbloom ('68); for the respondent, Douglas McK. Brown, QC and A.W. Hobbs, QC.

1984
GUERIN CASE
[1984] 2 S.C.R. 335

For the appellant Guerin, Marvin R.V. Storrow, QC ('62), Lewis Frank Harvey ('78) and former adjunct professor Jim Reynolds. Intervener (National Indian Brotherhood/Assembly of First Nations), Brian Anthony Crane, QC ('60) and Arthur Charles Pape ('79); for the respondent, W.I.C. Binnie, QC, M.R. Taylor and M. Freeman.

1990
SPARROW CASE
[1990] 1 S.C.R. 1075

For the appellant Sparrow, Marvin Storrow, QC, ('62), Lewis Frank Harvey ('78) and Joanne Rene Lysyk ('86); for the respondent (BC Attorney General), (now Justice) Thomas R. Braidwood ('53); for the intervener (National Indian Brotherhood/Assembly of First Nations), (now Justice) Harry Arthur Slade, QC ('73), Arthur Charles Pape ('79) and Louise Mandell, QC ('75); for intervener (Fisheries Counsel of British Columbia), J. Keith Lowes ('69); for the intervener (United Fishermen and Allied Workers' Union), (now Justice) Ian Donald ('68).

Among the BCCA, The Hon. Mr. Justice William Arthur Esson, JJA. ('57).

1995
BLUEBERRY INDIAN
BAND CASE
[1995] 4 S.C.R. 344

For the appellant band, the Honourable Thomas Berger, QC, OBC, QC ('56), Arthur Charles Pape ('79), Leslie Joyce Pinder ('76) and Gary Allen Nelson ('82); for the respondent (Attorney General of Canada), Ivan George Whitehall, QC ('67) and Mitchell Ross Taylor ('80); for intervener (Musqueam Nation and Ermineskin Tribal Council), Marvin R.V. Storrow, QC ('62) and Maria A. Morellato ('84).

1996
VAN DER PEET CASE
[1996] 2 S.C.R. 507

For the appellant Van der Peet, Louise Mandell, QC ('75) and Leslie Joyce Pinder ('76); for the respondent, the Honourable Mr. Justice S. David Frankel ('73) and Cheryl Tobias

('80); for intervener (Fisheries Counsel of British Columbia), J. Keith Lowes ('69); for intervener (BC Fisheries Survival Coalition and BC Wildlife Federation), Robert Magnus Lonergran ('91); for intervener (National Indian Brotherhood/Assembly of First Nations), (now Justice) Harry Arthur Slade, QC ('73) and Arthur Charles Pape ('79); and for intervener (Howard Pamajewon et al.), Arthur Charles Pape, and intervener (Delgamuukw et al.), UBC law professor Michael Jackson, QC and Stuart Allen Rush, QC ('70).

Among the SCC, The Hon. Mr. Justice Frank Iacobucci, CC, QC ('62), among the BCCA, The Hon. Mr. John David Taggart QC ('49); The Hon. Mr. J. Douglas Lambert ('58); Henry E. Hutcheon, QC ('50).

1996
N.T.C. SMOKEHOUSE CASE
[1996] 2 S.C.R. 672

For appellant Smokehouse, David Rosenberg ('78) and Hugh M.G. Braker, QC ('83); for the respondent, (now Justice) S. David Frankel ('73) and Cheryl Tobias ('80); for intervener (Canadian National Railway Co.) Patrick G. Foy, QC ('76), for intervener (National Indian Brotherhood/Assembly of First Nations), (now Justice) Harry Arthur Slade, QC ('73) and Arthur Charles Pape ('79); intervener (BC Fisheries Survival Coalition and BC Wildlife Federation), Robert Magnus Lonergran ('91); intervener (*Delgamuukw* et al.), UBC law professor Michael Jackson, QC and Stuart Allen Rush, QC ('70), and intervener (Howard Pamajewon et al.), Arthur Charles Pape ('79).

Among the SCC, The Hon. Mr. Justice Frank Iacobucci, CC, QC ('62), among the BCCA, The Hon. Madame Justice Patricia M. Proudfoot, OBC ('52) J.A. in Chambers.

1996
GLADSTONE CASE
[1996] 2 S.C.R. 723

For the appellants (Gladstone), Marvin R. V. Storrow, QC ('62) and Maria A. Morellato ('84); for respondent, (now Justice) S. David Frankel ('73) and Cheryl Tobias ('80); for intervener (National Indian Brotherhood/Assembly of First Nations), (now Justice) Harry Arthur Slade, QC ('73) and Arthur Charles Pape ('79); for intervener (BC Fisheries Survival Coalition and BC Wildlife Federation), Robert Magnus Lonergran ('91); for intervener (*Delgamuukw* et al.), UBC law professor Michael Jackson, QC and Stuart Allen Rush, QC ('70); for intervener (Howard Pamajewon et al.), Arthur Charles Pape ('79).

Among the SCC, The Hon. Mr. Justice Frank Iacobucci, CC, QC ('62), among the BCCA, The Hon. Mr. John David Taggart, QC ('49); The Hon. J. Douglas Lambert ('58); The Hon. Mr. Henry E. Hutcheon, QC ('50).

1996
PAMAJEWON AND JONES
(ONTARIO) CASE
[1996] 2 S.C.R. 821

For appellants (Pamajewon and Jones), Arthur Charles Pape ('79) and intervener (AG Canada), Ivan George Whitehall, QC ('67).

Among the SCC, The Hon. Mr. Justice Frank Iacobucci, CC, QC ('62).

1997
DELGAMUUKW CASE
[1997] 3 S.C.R. 1010

For the appellants and respondents on cross appeal, the Gitksan Hereditary Chiefs et al., Stuart Allen Rush, QC ('70), UBC law professor Michael Jackson, QC, Peter R. Grant ('75), Louise Mandell, QC ('75) and David T. Paterson ('75); for the appellants and respondents on cross-appeal, the Wet'suwet'en Hereditary Chiefs et al., Marvin R.V. Storrow, QC ('62) and Joanne Rene Lysyk ('86); for the AG Canada, Judith A. Bowers, QC ('75); for intervener (First Nations Summit), Arthur Charles Pape ('79) and (now Justice) Harry Arthur Slade, QC ('73); for intervener (Musqueam Band), Marvin R.V. Storrow, QC ('62) and Joanne Rene Lysyk ('86); for intervener (BC Cattleman's Association et al.), J. Keith Lowes ('69) and for intervener (Alcan Aluminium Ltd.), Jesse Edward Gouge, QC ('77) and Jill Michelle Marks ('94).

Among the BCCA, The Hon. Mr. Justice John David Taggart, QC ('49), The Hon. Mr. Justice J. Douglas Lambert ('58), Mr. Justice Henry E. Hutcheon, QC ('50).

2003
POWLEY (ONTARIO) CASE
(2003 SCC 43)

For appellant/respondent (Powley), Arthur Charles Pape ('79) and intervener (BC Fisheries Survival Coalition), J. Keith Lowes ('69).

Among the BCCA, The Hon. Mr. Justice William Arthur Esson ('57), The Hon. Madam Justice Mary Southin, QC ('52) (1997; leave to appeal to SCC refused 1998); The Hon. Mr. Justice J. Douglas Lambert ('58).

2004
HAIDA NATION CASE
(2004 SCC 73)

For respondents (Haida Nation), Louise Mandell, QC ('75), UBC law professor Michael Jackson, QC and Terri-Lynn Williams-Davison ('95); for intervener (AG Canada), Mitchell Ross Taylor ('80) and Brian Alexander McLaughlin ('81); for intervener (Squamish Indian Band and the Lax-kw'alaams Indian Band), Gregory John McDade, QC ('78) and John R. Rich ('85); for interveners (Council of Forest Industries, Business Council of BC, and BC Chamber of Commerce), Peter James O'Callaghan ('84); for intervener (First Nations Summit) Hugh M.G. Braker, QC ('83), Anja Petra Brown ('97) and Arthur Charles Pape ('79) and intervener (Village of Port Clements), Stuart Allen Rush, QC ('70).

2004
TAKU RIVER TLINGIT
FIRST NATIONS CASE
(2004 SCC 74)

For respondent (Tlingit band), Arthur Charles Pape ('79) and Richard B. Salter ('79); for respondent (Redfern Resources and Redfern Ventures Ltd.), Randy J. Kaardal ('86) and Lisa Deanne Hynes ('95); for intervener (AG Canada), Mitchell Ross Taylor ('80) and Brian Alexander McLaughlin ('81); for intervener (Business Council of BC, BC and Yukon Chamber of Mines, BC Chamber of Commerce, BC Wildlife Federation, Council of Forest Industries, Mining Association of BC and Aggregate Producers Association of BC), Peter James O'Callaghan ('84); for intervener (First Nations Summit), Hugh M.G. Braker, QC (83), Anja Petra Brown ('97) and Arthur Charles Pape ('79).

Among the BCCA, The Hon. Madam Justice Mary Southin, QC ('52) and The Hon. Madam Justice Anne Rowles ('68).

2006
MORRIS CASE
(2006 SCC 59)

For appellant (Morris), Louise Mandell, QC ('75), Ardith Wal'petko We'dalx Walkem ('95 LL.M. '05), Bruce Carter Elwood ('92) and UBC law professor Michael Jackson, QC; for intervener (AG Canada), Mitchell Ross Taylor ('80); for intervener (written—Chief Roger William), David M. Rosenberg ('78).

Among the BCCA, The Hon. Mr. Justice J. Douglas Lambert ('58) and The Hon. Mr. Justice Allan Douglas Thackray, JJA. ('58). ●

Every effort has been made to ensure the accuracy of this list. If an error is noted, please accept our sincere apologies in advance and notify us at 604.822.4172 or communications@law.ubc.ca

A photograph of a person standing in a field of tall, golden-brown grass. The person is seen from behind, wearing a brown jacket and blue jeans, with their arms slightly outstretched. In the background, there are rolling hills or mountains under a clear blue sky. The overall mood is peaceful and contemplative.

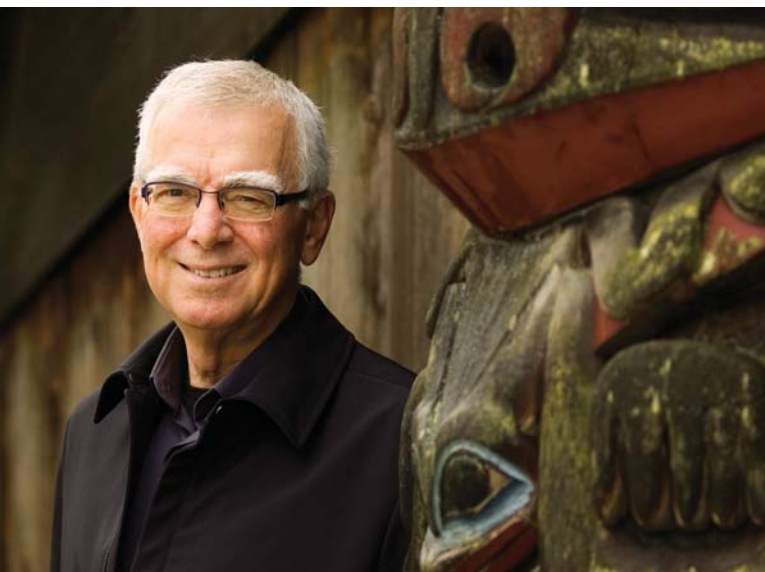
Walk Gently on the Land

Laugh Aloud
in the Midst of Great Fear

by Diane Haynes

1982–2007.

The inclusion of Aboriginal rights in the Canadian *Charter* marked the end of one series of battles and the beginning of another. 2007 marked the 25th anniversary of Section 35 and in 2007, as in no other year, we all awakened to the need to walk gently on the land. In this issue, we profile nine UBC Law alumni for whom the anniversary is a significant milestone—a chance to reflect on how far we’ve come—and an arbitrary one—there is still so much more to be done. These nine, and many others, have been fighting since before 1982 and will continue to fight, to determine the nature and extent of Aboriginal rights, and to protect the land and the lives to which those rights are so intimately tied.



Stuart Rush, QC

CLASS OF 1970

A partner with Rush, Crane, Guenther, Stuart Rush provides ongoing litigation and counsel for the Okanagan, Kwakiutl, and Pic River Ojibway First Nations as well as the Confederated Tribes of the Colville Reservation, and speaks extensively on Aboriginal rights and the use of oral history evidence. He was appointed Queens Counsel in 1992. These are his words:

On attending UBC law school in the '60s:

Alan Ginsberg, who was a buddy of Jack Kerouac's, came to the university. At that time, he was active in promoting a much more accept[ing] attitude toward the use of marijuana. [He came] to one of our classes at the law school with his horn-rimmed glasses, cheery smile and big beard and got the whole class chanting, 'Om.' Getting all of us ... you can imagine a bunch of law students? All, 'Om, om, om!'

Rush had been active in student politics during his undergrad years at the University of Western Ontario, and found BC to be fertile ground for many of his progressive social and political ideals. As a student at UBC, he served on the UBC Senate, worked with practising lawyers to place Vietnam War resisters in Canada and joined in the occupation of the Faculty Club.

The head of the Club at the time was a law professor and one of the active participants in the occupation was the head of the Law Students' Association. So the lines were drawn, particularly within the law school.

I found law school to be a very exciting and ennobling environment. I liked it a lot and I had great faith that the law was a capable vehicle of mobilizing social change.

On why he chose to work in Aboriginal law:

When I first started practising law, I saw that Aboriginal people were being abused and their rights trampled on. There were an inordinate number of Aboriginal people in jail as a result of heavy-handed sentencing in criminal cases. Aboriginal people were telling us they had rights to do things because they had done them for all time, and we couldn't make any headway with those rights. That deeply and profoundly bothered me. There was no way for Aboriginal people as individuals and communities to have their history and culture ... recognized in this province. Instead, until Delgamuukw, the provincial position was one of denial: 'You don't have rights. You don't have any entitlements to land. You don't have priority to the fishery.' All of that was inconceivable to me, and detestable.

Rush originally intended to practise as a criminal lawyer, and articulated with Rankin & Company with that goal in mind. Early in his articles, the firm was hired to conduct an inquest into the death of Fred Quilt, an Aboriginal person. As a junior on the case, Rush was responsible for interviewing witnesses and portraying to the court the cultural character of the community from which Fred Quilt came. The Quilt case was Rush's entrée into Aboriginal litigation.

After I developed some expertise as a criminal lawyer, I was retained by the Gitksan-Wet'suwet'en tribal council to be counsel on 18 fishing charges. We won them all. There's nothing like winning cases to spread your notoriety around the Aboriginal community. That was really the lead-in to my being retained by the Gitksan-Wet'suwet'en to be one of their counsel on their Aboriginal title case.

Rush worked on such leading cases as *Delgamuukw*, *Guerin*, *Van der Peet*, *NTC Smokehouse*, *Gladstone* and *Haida Nation*. Here, he speaks on *Delgamuukw*, with which he was involved from filing the writ in 1984 through the Supreme Court of Canada decision in 1997:

The case recognized and really established the principles for the determination of Aboriginal title claims to land in the country: how those claims are advanced; what are the considerations; what constitutes proof of Aboriginal title; the stringency of proof; the factors to take into account when justifying or accommodating Aboriginal interests were all decided in that case. And most importantly, the case finally decided that in the Province of BC, Aboriginal rights and title have never been extinguished.

Sparrow, Gladstone, Van der Peet and NTC Smokehouse ... led to a recognition of Aboriginal rights to fish. But what Delgamuukw did was to go beyond resource-use rights to land-based rights.

So if you were to look at one case that established comprehensive threshold principles that are applicable every day in Aboriginal litigation it would be Delgamuukw. I was lead counsel on the legal team that tried that case for 14 years of its history. [It] was decided ... 10 years ago this December 11th.

On the use of oral history evidence:

The courts have to realize that in order to understand the Aboriginal community you have to accept their perspective on themselves. Since Delgamuukw ... trial judges have increasingly been directed by higher courts to look at what the oral histories say. It seems to be a lot easier for judges to accept historians [but] the historians' evidence ... is really the non-Aboriginal history. So there is another history, and it's the history of the people who have recorded their own ways and passed it on in their own ways.

On the future of Aboriginal rights in British Columbia:

Most of this province is still encumbered with Aboriginal title. Regrettably, the BC Treaty Commission has, by and large, foundered over its 15 years of existence. So if there is to be a

negotiated resolution of the land question in BC, then there has to be a revitalized political will that finds its expression in new mandates and recognition of cultural values of Aboriginal people at the treaty table. You can't really say that the legal avenue is going to be the end vehicle by which settlements and claims are fully recognized. It will happen through an interaction of processes.

Rush expresses his hope that students attending UBC Law now will be attracted to working on and developing these cases.

It's an important part of the development of the law, which I think has to happen to give us what the real spirit of people living in this province is all about. I want to see Aboriginal people in this province recognized for the First Peoples that they are, and to have recognized the value of their culture and what they bring to our own culture. I believe that we have much to learn, and much to gain.

Justice S. David Frankel

CLASS OF 1973

He's a natural storyteller. His recollections of law school, of colleagues and of trials take shape as fully formed narratives. He speaks with a hint of laughter in his voice and as though he has all the time in the world for these tales; you'd never guess he had 45 volumes of material on a construction case vying for his attention. He is newly a Justice of Appeal of the Court of Appeal for BC and Judge of the Court of Appeal of Yukon, but once upon a time, just over a decade ago, the Honourable S. David Frankel was lead counsel for the Federal Government on the "fishing cases"—*Van der Peet*, *Gladstone* and *NTC Smokehouse*:

"Early on," Frankel recalls, "the [Court of Appeal] held a number of pre-appeal conferences, because the logistics of hearing a number of cases with multiple parties and so many interveners was unheard of. At one of the early ones, I'm sitting there at counsel table, we're waiting for the judge to come in. And Tom [Berger]



was sitting behind me and he says in a sort of a loud whisper, 'I don't know why Frankel's involved in these cases. He doesn't know anything about Aboriginal rights!' So I turned around and I said, 'Tom, what you don't understand is, you know those tags they put on salmon to track them?' He said, 'Yes.' I said, 'Well, those are actually little wiretap devices and that's why I'm here—because this is really a wiretap case!' That quieted him down for a minute."

From his early teen years, Frankel wanted to practice law. Upon graduating from UBC, he sought work in the civil litigation section of the Department of Justice in Vancouver. There were no openings at the time, so the Director placed him in the prosecution

group, promising to review the situation in six months. By then, that Director had left the office, and Frankel “stayed where I was for 32 years, 121 days.”

Just before he joined Justice in 1974, the wiretap provisions of the Criminal Code were enacted. Frankel developed an interest and an expertise in the area, which was virgin territory in the Canadian legal landscape, and stayed with it for over 30 years. In 1982, when the *Charter* came into effect, Frankel once again immersed himself. “It sort of fit with the wiretap work,” he says, “because some of the early *Charter* challenges were either to wiretap provisions or wiretap practices.”

In March of this year, Frankel was appointed a Judge of the Supreme Court of British Columbia, and a scant 11 weeks later, was made a Justice of the Court of Appeal, filling a vacancy created by the retirement of Madam Justice Mary Southin.

“The job requires a tremendous amount of reading,” Frankel explains. “You’re basically reviewing records of proceeding to determine whether there was some error in them. The way our system operates now, in the majority of instances the Court of Appeal is the final court, because so few cases are heard by the Supreme Court of Canada. For the vast majority of litigants, this is the last stop.”

Frankel is being exposed daily to many areas of law he has not encountered since law school, without the advantage of having spent years on the trial bench. “As a former colleague of mine said, ‘The thinnest book on any law library shelf will be the collected judgments of Frankel, J.’” Frankel laughs.

Frankel’s response to a steep learning curve is to read—voraciously. The technique has seen him in good stead through a long and much lauded career, and it served him just as well in the fishing cases. “I was brought in and made part of the team because I had criminal law and appellate expertise,” he says. “These were, after all, criminal cases. The Aboriginal part was very much [a] ground-up learning experience for me.”

Van der Peet, *Gladstone* and *NTC Smokehouse*, along with *Nikal* and *Lewis*, went through the Court of Appeal and then to the Supreme Court of Canada “as a package,” and were arranged so as

to be heard together. “The significance of particularly *Van der Peet*—because as it turned out, it became the lead judgment—was that it gave the Supreme Court of Canada an opportunity to clarify some of the things it had said in *Sparrow*, particularly as relates to the test for determining the existence of an Aboriginal right,” Frankel says.

“It was unclear whether the court had intended [certain words] to constitute a test or [whether] it was simply a comment in passing,” he continues. “And I’m thinking of the words ‘integral to.’” One of the debates in the Supreme Court centred on whether it was necessary for a practice to be integral to First Nations society in order for it to be recognized by the common law as an Aboriginal right.

“I can remember the question that came from the Bench to me from Mr. Justice La Forest, who had been one of the authors of the *Sparrow* judgment,” Frankel recalls. “He said to me, ‘Mr. Frankel, when we used those words, were we simply commenting on the facts or did we intend them to constitute some form of test?’ I looked up at him and said, ‘M’Lord, I don’t mean to be glib—our position is you were setting out a test—but it’s really for *you* to tell us what you meant.’”

With his understanding of courtroom dynamics heightened by recent experiences, Frankel says, “A lot of the give and take in any court—and the Supreme Court of Canada is no different—involves individual judges looking for some assistance.” In the end, the court decided that “integral to” was the defining feature of the test for determining the existence of an Aboriginal right.

Frankel is an active speaker and author, a Fellow of the American College of Trial Lawyers, and was an Adjunct Professor with UBC Law, where he taught Advanced Criminal Procedure for 20 years. In 2004, he was the first recipient of the law school’s Adjunct Professor Outstanding Service Award. He has been involved in numerous legal education programs in and outside of the Department of Justice. Throughout, his cases have put him at the leading edge of developments in the law, which is where he plans to stay.

“I was given the opportunity to change careers at a time when some people are starting to wind down,” Frankel says. “What lies in my future is being exposed to a wide variety of new legal issues and being confronted by new problems to hopefully solve in a principled way.”

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“The significance of particularly *Van der Peet*—because as it turned out, it became the lead judgment—was that it gave the Supreme Court of Canada an opportunity to clarify some of the things it had said in *Sparrow*, particularly as relates to the test for determining the existence of an Aboriginal right.” JUSTICE S. DAVID FRANKEL

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Peter R. Grant

CLASS OF 1975

PROLOGUE

This story runs in linear columns on a standard page, like any other. But it is carved in circles: film reels and moving pictures; ancestors and descendants; reunions. Choose any starting place; you will find you end where you began.

After graduating from UBC in 1971 with a BA in Film Production and English and then traveling through Europe and Asia for a year, Peter Grant was without work. An employment counselor asked him what he was trained to do, and he answered, “I’m in film. I want to be a film producer.” And she said, “Have you got any other options?” And I said, “Well, I’ve been accepted to law school, but I don’t really want to go.” So she said, “Go to law school. There is no future in film in this country.” Grant went to law school.

He admits he felt little passion for law at first. “There was only one course in Aboriginal law,” he says, “and it was the only thing I was really keen on.” In third year, he discovered he could further satisfy that interest by doing a directed research program. He chose to study non-Western legal systems—specifically, traditional laws—and conducted an analysis of the traditional laws of the Tlingit and the Gitanyow. During his articles, Grant was contacted by Stuart Rush and Don Rosenbloom, then with the BC Law Union, who were assembling a group of articling students to work with them on Leonard Peltier’s extradition case. Grant joined their team. “I thought if I was going to do law,” he says, “I wanted to work for the underdog. I realized that Aboriginal people certainly were the underdogs in Canadian legal jurisprudence up to that stage.”

After articles, Grant and three others formed a law collective in downtown Vancouver and began to generate their own work. But a notice in the old courthouse (now the Vancouver Art Gallery) caught his eye: the community of Hazelton was seeking help to set up a community law office for the Gitxsan and Wet’suwet’en. He interviewed in September of 1977 and left Vancouver in December. “I was just overwhelmed by the people and the warmth,” he recalls.

Hazelton was, Grant says, as remote as you could get. Intending to be there for a couple of years, he made a home in the community and was adopted by the people, and stayed until 1995. After handing the operation of the community law office over to an Aboriginal lawyer, Grant built a log law office, married, raised his two daughters there and established a private law practice.



Early on, he was approached by the land claims research office to take an Aboriginal title case for the Gitxsan and Wet’suwet’en. He refused, claiming to be too junior a lawyer and too ignorant of the cultures to be of genuine help. A couple of years later, the request came again, and this time, he said yes. The case was *Delgamuukw*.

Grant prepared the evidence of over 100 elders who testified at trial, his arguments strengthened by his first-hand knowledge of traditional laws. “Part of ... *Delgamuukw*,” he says, “was the recognition by the courts of traditional legal systems and traditional Aboriginal governance.” After a 14-year process, *Delgamuukw* established in the Supreme Court of Canada that Aboriginal rights exist, and that they have not been extinguished by any legislative act of government.

Grant is the founding partner of Peter Grant & Associates, and has worked on behalf of Aboriginal peoples in Canada for the whole of his career. As well as acting as one of the lead counsel on *Delgamuukw*, he acted on *Nikal* (fishing), *Luuxhon* (duty to consult) and *Blackwater, Aleck and Barney* (residential school claims). Past Chair of the National Aboriginal Law Section of the Canadian Bar Association (CBA), he is the ongoing CBA representative for Aboriginal law on the Federal Bar and Bench Liaison Committee and serves on the Board of Directors of EAGLE. He has published extensively on residential schools; assistance to Aboriginal governments; treaty negotiations; and Aboriginal title.

Grant discusses his ongoing representation of the Semiahmoo Nation with respect to the Tsawwassen treaty, which was tabled in the legislature two days before this interview. The treaty would give the Tsawwassen Nation unlimited access to the Boundary Bay crab fishery for 11 years; Grant’s team claims this would seriously impact the s.35 rights of the Semiahmoo.

Citing *Haida* and the government's duty to consult, he says, "The government has said 'No, no, no, that doesn't apply to these kinds of treaty negotiations!' So this is a very important case, because it'll be whether or not the government's duty to consult and seek accommodations with other Aboriginal Nations applies when they're entering into treaty negotiations with a Nation."

Since *Haida* (2004), Grant has taken the provincial government to court four times for failing to consult, and won every time. "I don't know how many times the Crown has to be taken to court," he says, "to be told, 'Look, we're serious—you have to accommodate other Nations' rights!'"

According to Grant, the way forward is through acknowledgement, accommodation and respect. "What we really want to do," he says, "is figure out how we share the resources" and he points to extra-judicial procedures such as an accommodation tribunal as a way to do that. He draws a comparison between his clients in the residential school cases and those in title cases: "They want an acknowledgement," he says, "and not so they can sue. An acknowledgement of the veracity of what they[re] saying. And I think it's the same with Aboriginal title. You want respect. And once you have the recognition, that leads to the respect."

EPILOGUE

On December 11, 2007, the legal team on Delgamuukw reunited to celebrate the tenth anniversary of that landmark decision. "We had different legal approaches," Grant says, "but we all remain good friends. I [count] that as a badge of honour."

* *Grant's younger daughter majored in film production and history at UBC. "[Film] was my passion," Grant says, "but I never even talked to the kids about it." She associate produced Reservation Soldiers, a documentary about the Canadian military's campaign to attract Aboriginal recruits. Directed by award-winning Anishinaabe filmmaker Lisa Jackson, it aired for the first time on CTV in early December.*

* *A year after his father died and many years into his practice, Grant learned that his great, great, great grandfather, who was a chief trader, was married to an Aboriginal woman. "I have to prove myself to [my clients] through the quality of my work, and not through my ancestry," Grant says. "But I find it quite fascinating that in fact these things sort of come full circle."*



Darin Dureck

Leslie J. Pinder

CLASS OF 1976

Born in 1948 in Elrose, Saskatchewan, Leslie Pinder earned her BA in English literature from the University of Saskatchewan, then traveled Europe before heading to Vancouver to pursue a Masters of English at UBC. But that conversation with her aunt led her to forego the relative ease of student life for some "experience" at 222 Main Street.

As a case reporter, Pinder worked shifts in the basement typing police investigation reports. Over time, she became curious about what happened to the reports after they left her hands, so she worked her way up—two floors up—into the courts as a recorder. It was, she says, "a perfect job for a writer, because all you had to do was turn on the machine and sit in court all day. Stories just came through the door every hour or so."

"We buried my aunt yesterday," Leslie Pinder begins. "I was reflecting at the service that she was actually the one who got me into all of this. [She] was a very beautiful but rather stern, matriarchal kind of woman. She said, 'And what are you going to do in your life?' And I said, 'Well, I'm going to become a writer.' She said, 'Oh, no, no, no, you can't become a writer. You have no experience! Why don't you get a job at the police department? You'll get experience there!' For some reason, I picked up the challenge and thought, 'Well, you know, she's probably right.'"

Pinder got to know the lawyers and judges, and became interested in their submissions. She found herself spending time in the prosecutors' law library reading the cases they cited and memorizing Latin phrases. But when she tossed *ex proprio vigore* into conversation at a dinner party one evening, a friend said, "You're getting very involved in this. You should think about becoming a lawyer." Once more, Pinder accepted the challenge.

At UBC law school, Pinder met Louise Mandell, a second-year student with whom she would eventually form Mandell Pinder LLP. "We were very rambunctious," Pinder says laughingly of her political activities with Mandell. " [It was] intellectually very stimulating and so much fun. We were out to see how we could change the world!"

Both Pinder and Mandell sought to refine their training in large firms after law school, but neither felt she'd found her niche. When Mandell accepted a position with the Union of BC Indian Chiefs working with then-President George Manuel, she said to Pinder, "This is amazing, what's happening here. Come on over!"

It was 1978, and Pinder and Mandell suddenly found themselves "on the inside." Pinder says, "There was an elder who was part of the [Union's] legal team and ... she was there ... to teach us who the people were, how to understand the different communities and what was important to [them]."

In 1982, when Canada sought to patriate the constitution, Pinder and Mandell were dispatched to London to stop it. "Our argument," says Pinder, "was that you [couldn't] have the devolution of rights from the Crown to a different order of government until these original obligations that were accepted when Britain created the colony [were] dealt with. [Native] people saw [their relationship to the Crown] as very tangible and very direct and not at all abstract and 'Where is the Queen?' and 'What does she have to say about this?'"

The Queen said yes, "and then of course the hard spade work [began]," says Pinder, "of trying to have Section 35 become a meaningful provision [in light of the phrase 'existing Aboriginal rights']. Lawyers for the politicians and local governments were saying Aboriginal rights had been extinguished so there was nothing existing at the time of the patriation. That argument continued to be made until it was finally resolved in *Delgamuukw*. That's not very long ago."

Pinder and Mandell joined forces in 1983, and their Supreme Court of Canada advocacy work included *Guerin v The Queen* [1984]; *Pasco v CNR* [1984]; *Apsassin v The Queen* [1995]; *R. v Nikal* [1996]; *R. v Vanderpeet* [1996]; *Delgamuukw* [1997]; and *R. v Grey and Sappier* [2006].

Pinder also worked as a sessional lecturer at UBC, teaching "The Spirit and the Land," about how language, myth, ceremony, writing and storytelling explain family ties, governance and spiritual traditions in Western and Native societies; and at SFU, teaching "First Nations and Treaty Negotiations" with Hugh Brody.

And throughout it all, Pinder wrote. "I was very disciplined," she says. "Nothing interrupted my lunch hour." In 1986, *Under the House*, a novel about family secrets, was published to critical acclaim. *On Double Tracks*, a courtroom drama about Native land claims, came out in 1990 and was short listed for the Governor General's Award for literature. Between 1990 and 1997, Pinder also wrote two plays, several short stories, articles and reviews, and the libretto for an opera.

But by 2003, Pinder found that "the demands of the law just got too onerous. I had one of those three o'clock in the morning dark night of the soul times," she recalls. "I woke up and thought, 'Who am I? Am I a lawyer? Am I a writer? Because I am not at this point able to do both.' And I decided that I was not prepared to *not* be a writer."

Her writing informed her work and her teaching throughout her legal career, and all that she learned during that career continues to inform her writing. She is currently at work on a novel about a renowned anthropologist working for Native people in the 1950s who commits suicide at the height of his career. Its title: *Bring Me One of Everything*. "[What] the Native communities went through in contact," says Pinder, "was like the very centre of meaning was ripped out of their lives in a way that we can only understand after 9/11. The sense of terror, and where is the terror coming from, and where is safety? That lasted for generations. This man who went into their community experienced it."

Pinder adds, "If you care about people who have gone through that experience, you go through it, too." She could be talking about herself.

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"Lawyers for the politicians and local governments were saying Aboriginal rights had been extinguished so there was nothing existing at the time of the patriation. That argument continued to be made until it was finally resolved in *Delgamuukw*. That's not very long ago." LESLIE PINDER

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Cheryl J. Tobias

CLASS OF 1980

Cheryl Tobias is Senior General Counsel in the Vancouver Regional Office for the Department of Justice. Her practice consists largely of appeals up to and including the Supreme Court of Canada dealing with constitutional, criminal and Aboriginal rights issues. Working with the team of lawyers who handle extradition and mutual legal assistance matters, Tobias is also responsible for all other matters in the BC Region relating to the criminal law mandate of the Department, such as interventions on constitutional questions and liaison with the newly created Public Prosecution Service of Canada. Her portfolio “changes a lot from day to day,” she says, “so it’s a source of some amusement. But that’s one of the nicest things about it.”

Tobias first studied psychology before turning to law, taking her interests in people-oriented and analytical work in the direction of justice. Her decision to work with the Department of Justice was equally conscious: “I wasn’t very interested in law as a business,” she says. “I saw this as an opportunity to do a lot of litigation and to work on the cases as the case required and not necessarily as I would get paid to do it. And I don’t have to look for clients—there’s never any shortage of those!” Tobias continues to work with a number of her former UBC Law classmates at the Department, and her graduating class recently enjoyed its 25th reunion.

Tobias takes an active role in legal education, both formal and informal. On the formal side, she guest instructs UBC’s advanced legal research and writing course and works with CLE, PLTC and the UBC Trial Advocacy Program. “I’ve enjoyed the interaction with students and younger lawyers,” she says. “I offer the benefit of my experience and I benefit from being challenged by their ideas and their fresh approaches to the issues, and from being stimulated by their enthusiasm and energy. So it’s a fair exchange. On the informal side, one of the great pleasures of my job has been the opportunity to work with and coach junior counsel on cases. I’ve worked with other counsel for periods ranging from days to years on particular files. Many of those are now among my friends.”

Involved in Aboriginal law work since 1992, when she litigated *Jack, John & John, Sampson & Elliott and Little*, Tobias cites the *Van der Peet* trilogy of commercial fishing cases as ones that stand out in her memory. She gives three reasons: “The most important was that it was a real [land]mark in terms of what Aboriginal rights were, what their characteristics were and



what had to be proven,” she says. “The other reasons are somewhat personal. One is that it was my first speaking experience in the Supreme Court of Canada.” The second was spending an entire week in the highest court in the land. “I was junioring David Frankel,” she says, “and he told me at the time [it] was an experience that almost never comes around and would never be repeated in either one of our careers.”

Tobias handled the BC Supreme Court summary conviction appeal in *R. v. Kapp*, as well as the appeal before the Court of Appeal. The case is now before the Supreme Court of Canada, and although she is no longer working on it, she’s following it with interest, as are many others:

You know, we hear a lot about the importance of consultation, accommodation and so forth. But Kapp is ... the opposite side of the coin. [It’s] about non-Aboriginal people or primarily non-Aboriginal people who take issue with a program that is designed specifically for Aboriginal people, claiming Section 15, a breach of their rights to equality before the law. So we have an interesting question of how those rights are going to interact.

We were preoccupied for a long time—and we do continue to be—in determining what Section 35 means, what the Aboriginal rights and title are, what’s their scope, what is due to the people who hold those rights. But sooner or later you have to deal with the other side of the coin. If we’ve got a set of rights within Canadian society that [belong] to a particular group of people, then the question of how those rights interact with the people who don’t have them is going to come up.

Tobias believes that the order of the day now is to determine how Aboriginal rights and title can and should play out, keeping the interests of all stakeholders in mind: “There’s a question about what rights the Aboriginal communities have. But in a fundamental way, there’s no longer a question about *whether* they have rights. The enduring questions I see are, How do we all go about our business, and how do we make that work? What are the *extent* of

the rights? What is the place of Aboriginal communities in the larger community? How do they take their place? What does that look like? What *should* that look like?"

Those are the questions for the next 25 years, and Tobias takes this opportunity to talk to the next generation of lawyers about working in Aboriginal law: "I have learned an enormous amount of the history of the country—and particularly this part of it—in a way that simply isn't possible by taking academic courses.

Aboriginal issues touch so many areas of practice now, especially government practice, that a broad academic background is important for this, as it is for so many other areas of practice. Another very important aspect, I think, is that practitioners acting for all parties should maintain a level of objectivity. This is an area in which opinions are sometimes polarized and passions run high, but it is necessary to maintain your professional objectivity."



Mitchell R. Taylor

CLASS OF 1980

Mitch Taylor is a family man. His son Patrick is studying sciences at UBC and his daughter Samantha is a member of Canada's Equestrian Team and a 2008 Olympic hopeful. His wife Nora, Senior Investment Executive with Scotia McLeod, comes up twice in conversation; they have been married for 31 years. So when Taylor says he "kind of fell into law," it sounds less like an accident than like falling in love: a wholehearted, lifelong commitment to the work he was meant for.

Taylor is Senior General Counsel, Aboriginal Law, in the BC Regional Office of the Department of Justice, where he has worked since his articles in 1980-81. He has received Deputy Minister awards of excellence for his work on Indian Residential Schools and Aboriginal law litigation and resolution. Among his professional affiliations is membership with the Supreme Court of Canada Advocacy Institute, and he is involved in Continuing Legal Education as an author, presenter, mentor and lifelong learner. Somehow, he still finds time for gardening and landscaping, interests that predate his work in the law.

Taylor earned his first degree in urban geography and worked as a Planning Officer for the City of Vancouver for three years before applying to graduate school in urban planning and law. He was accepted to both. He decided, "I'm gonna try out law!" And one thing led to another. I think it was really just the intrigue of ... seeing what it was like."

Despite a first year he calls "a trial to everyone," Taylor credits then-Dean Lysyk and Professor Bertie McClean with making the potentially dry subjects of constitutional law and trusts interesting to him. He mentions the camaraderie of those years more than once and, with a planner's insight, notes the role the building's common area played in nurturing that.

When it came time to article, Taylor applied to several firms before responding to an ad for the Department of Justice. "I thought, 'Makes sense—the Federal Government's going to need lawyers,'" he says. He was interviewed by Bill Hobson, who had just led the incorporation of VIA Rail and regaled the young Taylor with fascinating details of the litigation involved. Taylor says, "There ... aren't very many places where you can get the breadth and challenge and interest that you can get with the Federal Government because of the great variety and complexity and problems that [it] gets involved in." He accepted their offer, and has stayed.

In 1984, Ian Binnie (now a Justice with the Supreme Court of Canada) brought Taylor in to junior on the *Guerin* case, and Taylor got his first introduction to Aboriginal law. Later, Taylor juniored on the *Blueberry River Indian Band* case. Always attracted to cases that dealt with the interests and needs of everyday people, Taylor "got deeper and deeper into Aboriginal law." For the last decade, it has comprised the whole of his practice.

"I view it as truly important work," Taylor says. "While people will often disagree with our position ... it makes a real difference, and benefits Aboriginal people and [all] Canadians to have the work done on these cases."

Taylor has argued for the Federal Government in the Supreme Court of Canada on *Guerin*, *Apsassin*, *Haida/Taku*, *Bernard/Marshall*, *Sappier/Gray* and *Blackwater*, to name just a few, and is currently lead counsel on several Aboriginal rights and title cases. But what stands out in his mind is the Indian Residential School file, and specifically *Blackwater*.

Blackwater “came out of the ... sexual abuse that had been suffered by many individuals ... at the Alberni Residential School in Port Alberni, mainly in the 1960s,” says Taylor. “That [case, which involved 30 plaintiffs] was a very profound and challenging experience, both as to the stories that were told and the tragedies both of the abuse and the aftermath, the impacts it has on people. Very challenging legal issue, too, with respect to the liability of the [United] Church and the government.” As Taylor puts it, “There were legal issues between the Church and government as to who was on for what, which won’t surprise you, I expect.” Taylor played an instrumental role in what are known as the Church Negotiations.

The *Blackwater* trial spanned two and a half years, and ended with the Supreme Court of Canada upholding the trial judge’s 75/25 split in liability between the government and the Church, and an award of significant financial compensation. That decision helped spark negotiations in the class action approach to resolving Indian Residential School claims.

This September 19th began the implementation of a \$1.9 billion class action settlement for some 15,000 claimants. Compensation “was addressed as our system of law provides,” says Taylor, “through money. But at the same time, there are non-money items to do with apologies, to do with healing initiatives.” Implementation will take several years; the healing, several more.

Taylor notes the unique considerations involved in acting for the Crown. “Whereas a First Nations claimant, like any other individual litigant, has as his or her prime objective to win their case,” says Taylor, “with the Federal Government ... you don’t just look at what’s best to do in this one case. You have to think beyond [it] to the consequences for other cases and other parts of the government. While in some ways a win is good, that’s not the sole objective.”

He adds, “As well as looking at the law, you have to look at what’s right.” Referring again to *Blackwater*, he notes that “in the Indian Residential School cases, the government and church [did] not rely on limitation periods for sexual assault [or] for a number of physical assaults as well. We decide[d] that what [was] right in these cases was to deal with [them] on their merits: was the person sexually assaulted, what’s the proper compensation, and who’s responsible.”

“I hope,” he says, “that the implementation will go smoothly, that the compensation flows and the people benefit from the compensation. There are some risks there, because the hucksters come around when people get money, and sometimes prevail on them to spend [it] on useless things.”

The accidental lawyer carries his work with him long after the echo of final arguments fades, but he wouldn’t have it any other way: “The work that I’ve done, the career that I’m having with the Department of Justice—marvelous work. A wonderful way to spend one’s day working and earning a living.”



John Rich

CLASS OF 1985

“I was not a very good student,” says John Rich.

As a Partner with one of the country’s leading law firms for First Nations issues; with over 20 years’ experience in Aboriginal rights and title, fisheries, environmental issues, and land and resource use at all levels of Court; experience on various administrative tribunals including the Canadian Human Rights Tribunal; as a founding director of Sierra Legal Defence Fund; past President of the West Coast Environmental Law Association; Advisory Council member of EAGLE; and a Director of the Georgia Straight Alliance, it’s difficult to imagine John Rich was not a very good *anything*. That is, until he explains.

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"The government of British Columbia for 100 years just denied Aboriginal rights and title, and their approach was that presumably it would all go away. That's no longer the case The provincial government has now recognized that they're better off to be inclusive with Aboriginal people rather than dismissive of them." JOHN RICH

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For most of those three years of law school, Rich was also the Chairman and then Vice-Chairman of Islands Trust, mandated to preserve and protect the environmental amenities of the Gulf and Howe Sound Islands. "I used to go to law school on my way to Victoria," he says, "and then come to law school on my way back from Victoria. I ended up having to cut a lot of classes—and a lot of the social experience that other people have." Rich also had a family to support. "It was an extremely busy time for me. I wish I had that energy again."

Rich earned a science degree in mathematics and philosophy in 1971 and worked a while for Statistics Canada. A growing interest in environmental and planning issues led him to Islands Trust, where he first recognized the power of law to impact things he cared about. In law school, he came to see the way law affects society on a broader scale, and paired that consciousness with a longstanding interest in social justice. "I became aware through taking Michael Jackson's course on Aboriginal law," he says, "of all the legal issues around First Nations." A conversation with the partners at Ratcliff & Company led to his articles placement, and to his career.

Ratcliff & Company has been working since the 1960s to help numerous First Nations regain their lands, re-establish their rights and become active economic players in resource development and business. The firm represented First Nations in negotiations leading up to the Constitution Act of 1982, and acted on First Nations' behalf as interveners in landmark Supreme Court of Canada cases including *Sparrow*, *Gladstone*, *Delgamuukw* and *Haida Nation*. Rich's extensive community work forms just part of a longer list of local organizations to which Ratcliff lawyers contribute their time. And of course, the groundbreaking cases continue.

For the past 11 months, Rich's focus has been a trial on Aboriginal fishing rights for the Lax Kw'alaams First Nation. He spoke to *UBC Law Alumni Magazine* just days after making his final arguments. Although there have been many Section 35 cases relating to fishing rights over the years, this case represents the first civil action; the Lax Kw'alaams Tsimshian claimed broad rights, and took the government to court to try to prove them. At press time, the judge's decision was still pending.

Rich is also working on a similar case for a number of Vancouver Island-based First Nations from Barclay Sound to the Brooks Peninsula, who are joining together in a civil action against the government claiming Aboriginal rights *and* Aboriginal title to fishing areas. Again, new ground: this is the first case putting fisheries at issue in title.

Rich manages Ratcliff's legal team on the case, which has been several years in preparation. Their job is to prove what kind of society existed among the First Nations before contact and what activities were integral to that society. The challenge is to find community members who are prepared to testify to their oral history. Given Canada's Residential Schools history and the Potlatch Ban, the chain of oral history is broken in places, so Rich's team must also rely on scholars for their evidence. They are also responsible for knowing the history from the early explorers through the development of the colony of BC and the confederation of Canada. The case is scheduled to commence before Madame Justice Garson on February 4 of 2008.

Rich comments on the curious necessity of reaching so far into the past to argue these cases. "There are very few areas of the law where you have to look at things that happened a long time ago," he says. "Most areas of the law cut off any inquiry by statutes of limitation and common law rules. [With these cases] you have to go back 200 years. It's extremely difficult, and also extremely interesting."

As Rich casts a glance toward retirement, he reflects on the role the law has played since 1982 in settling these ancient disputes: "The government of British Columbia for 100 years just denied Aboriginal rights and title, and their approach was that presumably it would all go away. That's no longer the case. The law is established that Aboriginal people have rights. We don't know just the extent of their rights. We don't know just the extent of what Aboriginal title means. But there's certainly enough there that ... the provincial government has now recognized that they're better off to be inclusive with Aboriginal people rather than dismissive of them."

He goes on, "From the Aboriginal people's perspective, they haven't won every case and don't win every case so they have an incentive as well to try to come to terms with governments and the broader society on the use of their traditional land and resources. Effectively, the law has played a mediating role by assuring that both sides in this constitutional discussion have reason to continue to talk and try and work things out."



Terri-Lynn Williams-Davidson

CLASS OF 1995

I'm a member of the Haida Nation and a member of the Raven Clan. In our oral traditions, Raven was originally white. There's days and days of stories of Raven as he ... haphazardly brings the world into existence as we know it. Through that process he steals the sun and the moon from their caretakers, flies through the smoke hole in the longhouse and brings light to the world. And when he flew through the smoke hole, he became black.

Some people view the white raven as being Raven in his truest form, having to undergo challenges and sacrifices to bring about better good for people. That's the work I focus on ... and

PRAYER SONG

by Robert Davidson

*wyaad t'l'aaau gam taajaaw dii swaii 7aat'awongga
wyaad t'l'aaau gam taajaaw dii agwaii 7aat'awongga*
Today there is not wind to push me

*wyaad t'l'aaau gam tajaawaay xangga h'langga
wyaad t'l'aaau gam tajaawaay xangga h'langga*
Today there is no wind to hold me back

*wyaad t'l'aaau dagwii gan gahls swan t'ang qwaagiidang
wyaad t'l'aaau dagwii gan gahls swan t'ang qwaagiidang*
Today we will go on our own strength

The purpose of the prayer song is to "clean the air and clean the floor" and bring everyone together as one mind before a ceremony or special event.

also it's a personal crest of mine that I've associated with for about 12 years. So I thought it was fitting for my law corporation.

You wouldn't be out of line to see the law as having been an instrument of the oppression of Aboriginal Peoples in Canada. But when Terri-Lynn Williams-Davidson formed White Raven Law Corporation immediately after her call to the bar, she tied her shield to the law and began to use it as an instrument of reconciliation and healing among the people of the Haida Gwaii.

"I wanted to go to law school when I was in grade 5," Williams-Davidson laughs now. A trip through the United States years later further illuminated that path for her. "Seeing different land battles, and seeing elders taking up arms against uranium mining, I decided that I would commit to go to law school and work on protecting the land."

Her undergraduate work focused on economics, commerce and computer science, all of which have informed her approach to the practice of law. "I embrace technology," she says. In gathering evidence over the past several years for an Aboriginal title case of the Haida, she says, "We've scanned in and OCR'd a lot of documents in preparation for an electronic trial."

Williams-Davidson's goal in her work is to "arrive at a reconciliation process that is sustainable environmentally, culturally and economically," she says. "Those are the main components that we have to balance in the cases that we present in court."

In considering the economic component, Williams-Davidson realized soon after forming White Raven that "Aboriginal Peoples have been in effect dispossessed through the laws and regulations and the allocation of lands ... so First Nations don't have the financial ability to bring the kind of litigation at the scale we need to ensure the development of Aboriginal law." Inspired by the Native American Rights Fund, a registered charity in the US, and by Sierra Legal Defense Fund, where she articulated, Williams-Davidson co-founded EAGLE in 1997—Environment-Aboriginal Guardianship through Law and Education. Mandated to protect the natural environment for all people through the provision of legal services to Aboriginal peoples, EAGLE raises funds for salaries for lawyers and support staff and provides community workshops on the state of Aboriginal-Environmental law.

Along with Louise Mandell (class of 1975), UBC Law Professor Michael Jackson and others, Williams-Davidson and EAGLE represented the Haida Nation in a landmark victory to protect the old-growth forests of Haida Gwaii (2004). "As the Parties work through accommodation of pre-proof rights, we're at about 50 percent of the land protected," says Williams-Davidson. "That's a significant amount, given that under the BC treaty process, the limit the province places is five percent."

With *Haida*, the Haida Nation and Williams-Davidson saw the potential for litigation—conventionally an adversarial process—to bring about a better result than might otherwise have occurred. "That case was about challenging MacMillan Bloedel's and Weyerhaeuser's logging rights," she explains. "The community that was employed by Weyerhaeuser ... Port Clements ... actually

intervened in favour of the Haida Nation at the Supreme Court of Canada to say that speaking and working directly with the Haida would provide a brighter future and more long-term sustainable community than if they continued with the province's existing tenure system. This is different than just a decision. It's a much fuller outcome for everyone in that everyone's involved in shaping the future. It's strange to think that litigation would encourage a new kind of dialogue!"

Williams-Davidson served as EAGLE's Executive Director for eight years and as Managing Lawyer for another year before turning the full force of her focus back to White Raven. Now, she is General Counsel for the Haida Nation, bringing forward their Aboriginal title case for Haida Gwaii challenging the exercise of the Crown's underlying authority under various legislation. The case will address title to the seabed—in this instance, offshore oil and gas development in Hecate Strait and tanker traffic through the port of Prince Rupert—for the first time anywhere in the

world. "An important part of the case, though," says Williams-Davidson, "is that we're not just seeking a declaration of title. One of our objectives is to look at, 'How do we live together with the land? How do we reconcile Aboriginal title with Crown title? How can we achieve that balance?'"

Williams-Davidson went to law school to learn to protect the land, but she knew that part of what she was attempting to do was to protect—and preserve—the people's relationship to the land. Her people. And by extension, all people. "Our culture is so directly a mirror of the land," says Williams-Davidson. "If the land isn't protected, then we can't sustain our culture." She is speaking of First Nations peoples, but with an understanding that she is speaking for us all. We are all in this together, and the law, so long an accomplice in our treatment of this land and its first peoples, may yet prove to be our way forward.

"Law is really about our relationships with each other," says Williams-Davidson, "and with Aboriginal law, it's really about our relationship to the land."



Ardith Wal'petko We'dalx Walkem

CLASS OF 1995 (LL.B.) AND 2005 (LL.M.)

Before newcomers came, and before settlement, and before the establishment of Canada, there were already ... Indigenous legal orders here which governed people and the land. After Canada was established, those laws were ... ignored ... and I think it's made a real difference to the land itself because in large measure the laws tended to be directed toward how to live responsibly with the land and with other life on the land. Section 35(1) ... created constitutional space for those laws to flow back onto the land.

Ardith Walkem is a member of the Nlaka'pamux Nation and grew up in Spence's Bridge, Salmon Arm and Chilliwack. With a BA in political science and women's studies from McGill and her LLB from UBC, Walkem returned to school in 2002 with an expectation that Indigenous legal traditions will come to hold a place within the practice of law as a whole. Her LL.M. thesis, entitled "Bringing

Water to the Land: Re-Cogniz-ing Indigenous Oral Traditions and the Laws Embodied Within Them," explores the possibility of recognizing Indigenous legal orders and incorporating concepts of legal pluralism into the Canadian legal landscape. "Courts have tended to recognize provincial and federal jurisdiction," Walkem says. "There's been an absence of recognition of Indigenous jurisdiction. What I'd like to see is ... for the constitutional discussion around Indigenous people's rights to focus not on mere discrete practices or activities but on the Indigenous laws which animate Aboriginal rights and title."

Since 1997, Walkem has run her own firm, employing an articulated student and frequently contracting her services to other firms. She has also taught for UBC Law and for the Institute of Indigenous Government, and developed curricula on Aboriginal-environmental guardianship for EAGLE. She writes for both legal and non-academic publications and has had her poetry and prose published as well as her scholarly articles.

Her practice doesn't revolve around a particular location, but takes her to communities all over the province, and that's a deliberate choice on her part. "I think part of the practice of law is that you have to decide what you want to accomplish in your life," Walkem

says. “If you have a particular concept of justice that matters to you, then there are real opportunities ... to make a difference. But sometimes those can be lost if you just follow a regular path. So if you have a very specific idea, you have to find news ways of practising.”

Walkem was part of the team that argued for the appellant in the *Morris* case (2006). The Tsartlip people and other Indigenous communities on southern Vancouver Island entered a series of treaties in the late 1850s with Governor James Douglas. Known as the Douglas Treaties, they’re considered federal Peace and Friendship treaties and guaranteed the people the right to hunt and fish as they had always done, without interference from the province. However, they contain what appeared to be a land extinguishment clause; they also bear a series of Xs in place of the signatures of the people.

OUR STORIES

by Ardit Walkem

Our stories are the evolving and continuing dance across time on the tongues and breath of our elders binding the people to the land, trees, rocks, rivers, valleys and tides.

Our stories are the blankets we weave, words placed carefully and wound tight securing a future for our children and a reverence for our grandmothers.

Our stories tell of a time when the Chief and his three sons lifted the cover of the ocean back to visit the sea world underneath the waves. They had tea, and then the salmon chief sent the gift of salmon home with the people.

Our stories tell of a time when a giant moose paused for rest on a flat land of marshes and bogs, deep oil pockets swirling beneath, and thousands of moose broke free from her slumbering stomach which sits still as the only rise on the flat horizon to bring life and meat to the people.

Our stories tell of the time when the coyote people practiced all winter, honing their muscles tight and instincts sharp to steal a giant ball which broke open on the way home revealing a solid core of shit. And humanity and humour was all that was left to bring home for the people.

Our stories tell of a time when wildwoman roamed the hills, hiding in groves of cedar and bracken, her basket knocking against her hip as she watched and waited and through her hungry regard built the foundations of respect in little children.

Through the telling of our stories, we are rendered active participants and warriors for our own survival. Past reason and science we hold fast to the sacred, to the stories which gave our people being and taught us how to walk gently on the land or to laugh aloud in the midst of great fear.

“So we jump forward 150 years or so,” Walkem picks up the story, “and Wayne Morris and Carl Olson are out hunting for their families and their communities. What they’re doing is they’re hunting at night and ... this is a very important part of their hunting tradition. Originally they would have hunted at night with pitch fashioned into torches, or alternatively burned pitch in bowls at the front of canoes. That evolved into the use of miners’ lamps or flashlights. And it was hunting with a flashlight that they were arrested for.”

The province purported to blanket extinguish the people’s right to hunt at night based on concerns about safety. The Tsartlip responded by saying that they had been hunting in such a way for 150 years and more, and they introduced evidence that in the whole history of their night hunt, no one had ever been harmed, due to their very strict hunting laws and practices.

When the case went to the Supreme Court of Canada, the court decided that because this dealt with a federal treaty, the province did not have the right to step in and regulate it, even if they could argue safety concerns. The court also took exception to the fact that the province had attempted to extinguish a method of hunting that had been integral to the Tsartlip way of life since time immemorial.

“It is important because it ... affirms that treaties are a federal responsibility,” Walkem says, “and that absent specific terms of the treaty that would allow the province to do so, the province can’t come in and regulate or attempt to restrict the exercise of treaty rights. It was a very big victory for the people.”

As an Aboriginal person using law to advance the rights of Aboriginal people throughout Canada, Walkem says, “I think that ... you carry a knowledge with you of the Indigenous perspective and Indigenous laws and ... knowledge about what the impact is and why it’s so crucially important to Indigenous peoples to achieve that recognition. I think maybe [I have] a heightened sense of responsibility because of that awareness.”

At the same time, Walkem sees an opportunity to share that responsibility, and she looks to the law school as a place where leadership for such an initiative might come. “There’s a possibility at the law school and in the legal community to present real opportunities for the involvement of non-Indigenous people in moving this forward,” she says. “I think there’s an opportunity to explore through the law school how that doesn’t have to be an adversarial process, how it can be a fundamental part of moving forward as a society to incorporate non-Indigenous and Indigenous peoples in a project of recognition of Indigenous legal order.”

The benefits, she believes, would flow both ways: “In many respects, Indigenous laws are very responsive to what the land and waters need to continue to sustain life. So there’s a possibility from within those traditions to teach people how to live in a different relationship with the land. I think when we’re engaged in a process of seeking justice on a societal basis then it won’t merely help Indigenous peoples; that benefits everybody.” ●

by Penny Cholmondeley

Finding HIS VOICE

DUNCAN McCUE
CLASS OF 1998

Duncan McCue is a national reporter for CBC-TV News in Vancouver, and his current affairs documentaries are featured on the CBC's *The National*. His work has been nominated for Gemini and Webster awards, and he received an RTNDA Award for investigative reporting and multiple honours from the Native American Journalists Association for investigative, news and feature reporting. McCue is Anishinaabe and a member of the Chippewas of Georgina Island First Nations in southern Ontario. Throughout his career, he has worked diligently to bring Native stories into the mainstream media. He was recently appointed the first Visiting Professor in Media and Indigenous Peoples at the UBC School of Journalism.

During undergrad, you studied English and Journalism. Why the shift to law?

It had more to do with what I was doing in the rest of my life, and being Native. In my first summer job during my undergrad, I worked for a Native political organization in Ontario called the Union of Ontario Indians. I was excited about what was going on in Native politics at the time. That was in 1990, and 1990 of course is when Oka happened. It was a highly political time to be a young Native man. There was a lot of talk going on about the rights of our

Nations and that was the environment that I found myself going to university in. I was wrestling with the questions "Why are we still under the Indian Act?" and "What does Section 35 mean?" At that point we were eight years into the [new] Constitution and there had been four conferences between the Government of Canada and Aboriginal leaders trying to define what Section 35 was going to mean. I grew up in a home where we talked about these things, so I was very conscious of the law and how the law had treated my people.

When you sit down and start thinking about the ways the Indian Act defines what I can do, I have been defined by the law. A lot of Canadians may not be conscious about how Supreme Court of Canada cases impact them, but Indians are. If you go down to Musqueam, they can tell you when they can go fishing, how much they can fish, and can probably discuss what a fiduciary responsibility means, because our rights have been defined by legal decisions. When I worked for the Indian political organization in Ontario, I found the Chiefs were often reliant upon the lawyers to tell them where they could go to direct politics and I thought, “I don’t always want to have to look over my shoulder and ask the lawyer, ‘What do we do next?’” I wanted to try to understand it.

Did you ever practice law?

No. I did my articles with a small firm in Gastown. I’d had a fantastic experience at UBC’s First Nations Legal Clinic and thought for a while that I wanted to be a criminal lawyer, but didn’t get a criminal article. My principal did primarily Aboriginal Law, and I did personal injury and wills and estates. At the same time, right through law school, I had been freelancing in journalism as well. Oddly enough, as I was articling at this small firm, I was called in to do a commentary at a local CBC station on *Delgamuukw*. Afterwards, one of the producers asked, “Have you ever thought about being a reporter?” I had done a couple of years of television, but had never thought about being a reporter until they offered me a job.

I was conscious as I was going through school of trying to keep up the two careers and I wanted to have the option open to me. It was a tough decision because I knew it was one of those tough crossroads: was I going to be a lawyer or was I going to be a TV guy? I wrestled with it for a long time.

As an Aboriginal journalist, did you face obstacles moving into the mainstream media?

The most obvious obstacle was that when I started I didn’t know what I was doing. I worked for a show called *Road Movies* and for YTV News, but that was an unusual experience in that they were asking for me to do commentaries. I could write whatever I wanted and they encouraged me to express my point of view. Journalism is a very different beast. The learning curve was huge for me, and the CBC, bless their hearts, took me on and I learned on the job.

I was also the only Native reporter at CBC Vancouver for a long time. And still, there aren’t many of us. Also, I had some strong views about the ways that Aboriginal communities had been covered in the mainstream media and I wanted to change that. I found that it wasn’t as easy as I thought it was going to be. It’s not that there was resistance to my ideas, but the definition of what makes news and what the lead story is—that definition has been around for a long time and my idea of what is newsworthy wasn’t always what my producers thought was newsworthy. In the first couple of years, I was racing off to blockades and things like that, which was exciting and fun. But then after a while I thought, “There’s more to life in Native communities than blockades.” That’s when I started to pitch different ideas, and that’s when it became tougher for me.

You have covered some very difficult stories addressing social and political issues. How do you balance reporting on hard issues and reporting on the positive?

I think that is partly why I have been at the CBC so long. I don’t mind tackling tough issues in the Native community, whereas a lot of young Native people who come into the system want to tell positive stories. There’s an old line about the “Four Ds” of news coverage for Native people. They were either “drunk, dead or drumming or dancing.” And if you are not doing one of those things then you’re not going to make it on the news that night.

So there have been a lot of people who have said they want to promote more positive role models. I think there are all kinds of problems in Native communities that need to be addressed. Whether we are poaching eagles, or our kids are working the streets and being abused, or we're dealing with financial accountability—those are all tough issues that communities are grappling with. I think Native reporters have a responsibility to try to report on those, and I can put things in context in a way that non-Native reporters might not be able to.

Is there a story that really resonates for you in your career?

The one I just did on Judge Ramsey [referring to "Abuse of Authority" which aired on CBC's *The National* on September 17, 2007. The episode tells the story of Jennifer, a victim of former BC Judge David Ramsey who was convicted for sex crimes against young girls]. I first met Jen three years ago and did that interview, but I couldn't put it to air because of a publication ban, and that was intensely frustrating. She resonated with me, really in a big way, partly because of her strength and because she is so articulate for a young woman who has been through so much. On a larger scale, what happened to her at the hands of David Ramsey stands for what has happened to a lot of Native people at the hands of a non-Native justice system.

Do you feel you are becoming a role model?

Yeah, I guess I am. But someone described me as the "first" Professor of Indigenous Media the other day, and I think that's an awful thing. I think of Judge Scow coming to UBC, and all throughout his career being described as the "first Indian lawyer," and the "first Aboriginal Judge," and I think "poor Judge Scow." First of all, being on your own for that length of time, but also that it's not a thing to celebrate [being the first]. There should be a bunch of Aboriginal journalists. There are more today, but there are still not enough, which is part of the reason I have started teaching. There are no Aboriginal students at the Journalism school right now ...

"...there needs to be Native voices in the mainstream, otherwise our voices are not being heard in the full complexity that they should be."

and there need to be. If my going there helps some Native kid or even some middle-aged Native person think they can do it, then great.

Tell me more about what inspired you to become an educator.

CBC is a really great place to be. It is maybe not like it was 30 years ago, but it is still one of the premier training grounds for young journalists and technicians in Canada. Training has always been part of the CBC, to ensure we produce the kind of quality we expect of ourselves and that Canadians expect from us. Two or three years ago, I realized that if I am at all good at my craft, it's in part due to the training I had, and that I wanted to pass that on—particularly because I despair about the small number of Native people who are going into journalism. There's a strong network of Native newspapers and radio stations, and now we have APTN, so there's lots of people interested in working within Indigenous media. But there are very few who want to make that cross-over into the mainstream, and there needs to be Native voices in the mainstream, otherwise our voices are not being heard in the full complexity that they should be.

What is the next career step for you?

I don't know, but I am looking forward to finding out! I've always said if I get a gold watch from the CBC then I'll be disappointed with myself because at some point I'd really like to help build the Indigenous media capacity in the country, and help shape it. And I haven't done that yet, and I do feel a really strong responsibility. At some point, I would like to take some of the skills I have learned and try to blend it with my experience in the Native community and create something that would really knock the socks off of Native communities, and the rest of Canada. ●

Report *on Giving*

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ANA-MARIA HOBROUGH

It has been an amazing year at UBC Law. We raised a record breaking \$10.3 million in fiscal 2006-2007. Although the generosity of UBC law graduates and friends in donating funds for the building has received much attention, the faculty also raised \$2.3 million to support other Faculty initiatives including student aid, academic programs and the student mooted program.

This is just a sample of what your donations did at UBC Law in 2006-2007:

- Created the Innocence Project at UBC, the first Innocence Project in Western Canada, and the third in all of Canada.
(www.innocenceproject.law.ubc.ca)
- Created more than 10 new student awards.
- Supported scholarships, prizes and bursaries (an amazing \$1 million went toward various types of student aid this year!).
- Allowed the National Centre for Business Law to offer lunchtime talks in downtown Vancouver, an intensive course in Cross-Border Business Law and a lecture in Calgary, as well as support valuable research initiatives such as the TSX Capital Markets Initiative.
- Supported the Competitive Mooting Program.
- Paid tribute to the memory of Dean Curtis through 370 individual donations to the Dean Emeritus George F. Curtis Student Endowment Fund. The fund total is now more than \$155,000.
- Made it possible for the Faculty to move forward with the building project.

On the topic of the building, I'm pleased to provide an update on our fundraising for the project. The excitement of the new school year was amplified in early September by an announcement by Richards Buell Sutton of their \$1 million commitment to the new

building. As 2007 wound down, we were pleased to announce a \$1 million commitment from national law firm Davis LLP and Irwin Davis, grandson of the firm's founder, Edward Pease Davis, K.C. I'm thrilled to report that less than a year after kicking off our building campaign, we are at \$20 million, in sight of our goal of \$24 million. This is due in no small part to the Law Foundation of BC's matching grant, for which we are very grateful.

Over the past few months, a number of you have contacted me about making class donations to the building fund. We are currently working with these classes to realize a permanent legacy to each class in the building. We are very grateful for the enthusiasm and leadership that has emerged with the class campaigns and look forward to working with more classes in the coming year.

We know you are eager for the law school to be housed in a building befitting the excellence of our students and faculty. The generosity of our alumni and the Vancouver legal community so far has been tremendous.

ANA-MARIA HOBROUGH
Director of Development

Building Update

On May 22, 2007, the UBC Board of Governors granted partial "Board 1" to the Faculty of Law building project. Board 1 approves the project in principle, as well as the location, the preliminary operating and capital budgets and the preliminary schedule, releases \$200,000 for conceptual drawings and allows us to select an architect from the short list.

Successful fundraising was a major factor in securing the approval of the Board of Governors. We are grateful to the lead donors of the

building campaign whose early commitment was instrumental in demonstrating the support this important project has in the legal community.

Just prior to this issue going to press, we were pleased to announce that the architectural services will be provided by a partnership of CEI Architecture of Vancouver, and Diamond + Schmitt Architects of Toronto.

\$6 MILLION

The Law Foundation of British Columbia



\$1 MILLION

Anonymous

Borden Ladner Gervais LLP

and the Ladner Family

Davis LLP and Irwin Davis

Farris, Vaughan, Wills & Murphy LLP

Richards Buell Sutton LLP



FAQ About the Building Project

How much will it cost?

The total cost is projected to be \$66 million.

How much needs to be raised through fundraising?

Our fundraising goal is \$24 million. To date, we have raised just over \$20 million.

Where will the new building be?

The new building will be located on the site of the current building.

What will happen to students and faculty during construction?

Classes and offices will be relocated during the 18-24 months of construction.

When will it be built?

There are still some details to be worked out regarding timing, but currently the best projection is that demolition of the current building would occur after classes finish in the Spring of 2009, with occupancy of the new building occurring in 2011.



Dean of Law Mary Anne Bobinski, Jeffrey Lowe, Managing Partner, Richards Buell Sutton LLP, and Matt Brandon, LSS President.



UBC Law Innocence Project

A Last Resort for the Wrongfully Convicted

Thanks to generous start-up funding from the **Leon Judah Blackmore Foundation**, the UBC Law Innocence Project was launched in September and will be run as a three-year pilot project that aims to give students a hands-on learning experience reviewing claims of wrongful conviction in Canada. The new Director, Tamara Levy, was pleased to welcome the first 10 students to the program, which includes both academic and clinical components. As the first program of its kind west of Ontario (and only the third in Canada) UBC Law is proud to add the program to its criminal law curriculum.

We would particularly like to thank **Leon Blackmore, Craig Sturrock, QC** and **Nicola Brailsford**, the trustees of the Blackmore Foundation, for their enthusiasm and invaluable

support. The Faculty would also like to thank the members of the Dean's Advisory Committee for their strategic direction and leadership.

Members of the Dean's Advisory Committee for the UBC Law Innocence Project

David Asper	Susan Daniells, QC
Thomas Berger, QC	Rod Holloway
Leon Blackmore	D. Mayland McKimm, QC
Nicola Brailsford	Donald Nundal
Joan Brockman	Richard Peck, QC
Dr. John Butt	Craig Sturrock, QC
Robert Claus	Tim Veresh
John Conroy, QC	Art Vertlieb, QC
Peter Cory, CC, CD, QC	Peter Wilson, QC

For more information visit
www.innocenceproject.law.ubc.ca

New Awards to Benefit and Reward UBC Law Students

The Faculty of Law is delighted that the following 11 new awards were approved by the University Senate during 2006/07:

- Borden Ladner Gervais Professional Excellence Award
- Bull Housser & Tupper LLP Prize in Succession
- Dean of Law LL.M. Prize
- Dean of Law Ph.D. Prize
- Gerald Donegan, QC Prize in Canadian Constitutional Law
- Fasken Martineau DuMoulin LLP Bursary
- Graduating Class of Law 1968 Bursary
- Graduating Class of Law 1970 Reunion Bursary
- James P. Taylor, QC Prize in Equitable Remedies
- Joel Nitikman and Liny Chan Bursary in Law
- Auriol Gurner Young Memorial Award in Law

We would like to thank everyone who was involved in the establishment of these awards.

We are currently working on setting up a range of new awards this year, including the **Peter Burns Moot Prize** sponsored by the Ministry of the Attorney General, Criminal Justice Branch which will reward students who have displayed outstanding advocacy skills in this competition; and the **Okanagan Bar Endowed Entrance Award in Law**, which will provide support to students who graduate from UBCO who have been accepted into the UBC Faculty of Law. Congratulations to **Walley Lightbody, QC**, for securing a grant from the Law Foundation of British Columbia that will match up to \$50,000 in donations to this new endowment; a special appeal is currently being conducted in the Okanagan region to make this new entrance scholarship a reality.

2006/07 Competitive Mooting Season a Great Success!

One thing alumni and students seem unanimous on: the value of being involved in the Competitive Mooting Program, whether as a student, a coach or a judge. Congratulations to the Faculty's moot teams on another successful season. We would like to thank the following law firms and individuals who make our participation in these competitions possible:

ABA Negotiation Competition

SPONSOR: Fraser Milner Casgrain LLP

Aboriginal Kawaskimhon Moot

SPONSOR: Blake, Cassels & Graydon LLP

UBC/UVic Moot

SPONSOR: Davis LLP

Canadian Corporate/Securities Moot

SPONSOR: Borden Ladner Gervais LLP

Gale Cup Moot

SPONSOR: Fraser Milner Casgrain LLP

Jessup International Moot

SPONSOR: Fasken Martineau DuMoulin LLP

Labour Arbitration Moot

SPONSOR: Harris & Company; and
Victory Square Law Office

Laskin Moot

SPONSOR: McCarthy Tétrault LLP

Oxford International Intellectual Property Moot

SPONSOR: Oyen Wiggs

Peter Burns Moot

SPONSORS: S.R. Chamberlain, QC;
Richard Peck, QC & Michael Tammen
Thanks also to the Attorney General's Office
for providing prizes for this competition.

Sopinka Cup Moot

SPONSOR: The Advocates Society

Western Canada Moot (MacIntyre Cup)

SPONSOR: Jim MacIntyre, QC

Wilson Moot

SPONSOR: Heenan Blaikie LLP

The UBC Faculty of Law is looking for a permanent sponsor for the CLIENT COUNSELLING MOOT. This moot was begun in 1975 by Jim Taylor, QC (Class of '68) and is currently run by Douglas Cochran (Class of '83). It provides an invaluable learning opportunity; students in this competition always comment that it is one of the best experiences they have at Law school. If you or your firm are interested in being a lead sponsor, please contact Karen Higginson, Development Coordinator, at higginson@law.ubc.ca or 604.822.9055.

Can You Create a Legacy at UBC?

From UBC's first-ever bequest—a remarkably generous \$12,000 was willed to the University in 1928—a great many donors have been leaving compounding gifts to benefit UBC students, researchers and the society we serve.

By helping your clients achieve their philanthropic goals, you are playing a significant role in helping the University prepare students to become global citizens and conduct leading research that will enrich the lives of the people of British Columbia, Canada and the world.

We're here to assist you and your clients plan for the future. Perhaps you require information about establishing a scholarship or bursary. Or you may be considering the best ways to structure a charitable gift to maximize the tax benefits for your client. Possibly you require a sample will clause for a client who wishes to create a legacy of learning at UBC.

UBC Gift & Estate Planning has significant experience with the structuring of charitable bequests, gifts of property, charitable trusts, gifts of publicly traded securities and other planned gifts. We're here to help. For further information, please contact the UBC Law Development Office at 604-822-0123.



Books, Articles, Seminars and Symposia

Faculty members have been active teaching, writing new books, attending symposia and conferences, giving guest lectures, hosting seminars and discussions with the legal community and applying for grants and awards to pursue their research interests. Here are some of the exciting projects that faculty members have been engaged in recently.

NEW BOOKS, CHAPTERS AND REVIEWS

Natasha Affolder, "Mining and the World Heritage Convention: Democratic Legitimacy and Treaty Compliance" (2007) 24 *Pace Environmental Law Review* 35; "Democratising or Demonsising the World Heritage Convention?" (Special Symposium Issue: International Law and Democratic Theory) (August 2007) 38:2 *Victoria University of Wellington Law Review* 341-361.

Tae-Ung Baik, "Justice Incomplete: The Remedies for the Victims of Jeju April Third Incidents" in Gi-Wook Shin et al eds., *Rethinking Historical Injustice and Reconciliation in Northeast Asia: The Korean Experience* (London: Routledge, 2007) 94-113.

Ljiljana Biukovic, "Compliance with International Treaties—Selective Adaptation Analysis" (2006) 44 *Canadian Yearbook of International Law*, forthcoming; "European Community in Disputes Before GATT/WTO Tribunals: Challenges of Coexistence of Regional Trade Agreements and WTO" (March 2007) 9 *Waseda Proceedings of Comparative Law* 105-139.

Susan B. Boyd, *Reaction and Resistance: Feminism, Law, and Social Change* with Dorothy E. Chunn and Hester Lessard (Vancouver: UBC Press, 2007) 320 pp.; "Gendering Legal Parenthood: Bio-Genetic Ties, Intentionality and Responsibility" (2007) 25 *Windsor Yearbook of Access to Justice* 55-85; "Calling for Change: Women, Law, and the Legal Profession," edited by Elizabeth Sheehy and Sheila McIntyre (University of Ottawa Press, 2006). *UBC Law Review* 40(2) (2007): 165-172.

Catherine Dauvergne, "Security and Migration Law in the Less Brave New World" (2007) 16:3 *Social and Legal Studies*, in press; "Citizenship with a Vengeance" (July 2007) 8:2 *Theoretical Inquiries in Law* 489-507.

Robin Elliot, "Safeguarding Provincial Autonomy from the Supreme Court of Canada's New Federal Paramountcy Doctrine: A Constructive Role for the Intention to Cover the Field Test?" (2007) 38 *Supreme Court Law Review* (2d) 1-40.

Nikos Harris, "Evidence in Appellate Proceedings," in *McWilliams' Canadian Criminal Evidence*, 4th ed., vol. 2, looseleaf (Aurora, Ont.: Canada Law Book, July 2007).

Shi-Ling Hsu, "Litigating Canada-US Transboundary Harm: International Lawmaking and the Threat of Reciprocity" (Fall 2007) 48 *Virginia Journal of International Law* 1-64.

Shigenori Matsui, *To Protect Children from Sexual Offenders—Megan's Law [Sei hanzaisha kara kodomo o mamoru: meganho no kanosei]* (Tokyo: Chuokoronshinsha, 2007) 265 pp. Japanese; "On the Possibility of Citizen Suit" in Takenori Murakami, Akio, Takahashi & Kazuhiko Matumoto, eds., *Development and Contemporary Structuring of State Governed by Rule of Law*; "On the Possibility of Citizen Suit" in E. Takenori Murakami, Akio Takahashi & Kazuhiko Matusmoto eds., *Development of Rechtstaat and Its Contemporary Structure* (Kyoto: Houritsubunkasha, 2007) 351-415; "On Populist Constitutionalism" in Kouji Sato, Tsuyosi Hiramatsu, Masanori Shiyake & Takahiro Hattori, eds., *State and Law in the Modern Society*; "The voting rights of Japanese citizens living abroad. (Constitutional Court Profile: The Supreme Court of Japan)" (April 2007) 5:2 *International Journal of Constitutional Law* 332-342.

Karin Mickelson, "Critical Approaches" in Daniel Bodansky, Jutta Brunnée, & Ellen Hey, eds., *The Oxford Handbook of International Environmental Law* (Oxford: Oxford University Press, 2007) 262-290.

Robert K. Patterson, "Totems and Teapots: The Royal British Columbia Museum Corporation" (2007) 40 *UBC Law Review* 421-437.

Benjamin Perrin, "Faster, Higher, Stronger: Preventing Human Trafficking at the 2010 Olympics" (Calgary: The Future Group, 2007) 24 pp.; "The Legal Architecture of Intergovernmental Transfers: A Comparative Examination" in Robin Boadway & Anwar Shah, eds., *Intergovernmental Fiscal Transfers: Principles and Practice*. (Washington, D.C.: World Bank, 2007) (with Sujit Choudhry); "Phnom Penh: A World Capital for Human Trafficking" in *Human Security*

Ljiljana Biukovic

Robert K. Patterson

Benjamin Perrin



for an Urban Century: Local Challenges, Global Perspectives (Ottawa: Department of Foreign Affairs and International Trade, 2007); "The Threat and Opportunity of Non-State Actors to a Conservative Foreign Policy" (September 2007) 1:2 C2C: *Canada's Journal of Ideas* 12.

Janis Sarra, *Rescue! The Companies' Creditors Arrangement Act* (Toronto: Carswell, 2007) 508 pp.; *The 2008 Annotated Bankruptcy and Insolvency Act*, co-authored with the Honourable Geoffrey Morawetz, (Toronto: Carswell, 2007); *Business Organizations: Principles, Policy and Practice* (Emond Montgomery, 2007) 1234 pp. co-authored with Ron Davis, Robert Yalden et al; "Northern Lights, Canada's Version of the UNCITRAL Model Law on Cross-Border Insolvency" (Spring 2007) 16:1 *International Insolvency Review* 19-61; "From subordination to parity: an international comparison of equity securities law claims in insolvency proceedings" (Winter 2007) 16:3 *International Insolvency Review* 181-246; "An investigation into employee wage and pension claims in insolvency proceedings across multiple jurisdictions: preliminary observations" (Oct 2007) 16:5 *Norton Journal of Bankruptcy Law and Practice* 835-872; "Disclosure as a public policy instrument in global capital markets" (International Academy of Commercial and Consumer Law: Changing Law for Changing Times, 13th Biennial Meeting) (Summer 2007) 42:3 *Texas International Law Journal* 875-898.

Sharon Sutherland with Sarah Swan, "Crossin' the Line: Law, Morals and Ethics on *Grey's Anatomy*," in Cynthia Burkhead & Hilary Robson, eds. untitled collection on *Grey's Anatomy* (Cambridge: Scholars Publishing), forthcoming Winter 2007.

Margot Young and **Susan Boyd** with Gwen Brodsky and Shelagh Day eds., *Poverty: Rights, Social Citizenship, and Legal Activism*. (Vancouver: UBC Press, 2007) 400 pp.; "Postcards, Feminism, and Economic Oppression" (2008) 17:1 *Social & Legal Studies* forthcoming.

Guest Lectures/Panelists/Presentations/Conferences/Workshops

Tae-Ung Baik presented "A Regional Human Rights Court or Commission for East Asia?" at the University of Victoria, July 2007; "Recent Changes in Korea and the Korean Community in Canada, Keynote speech" at the C3 Society Conference, Vancouver, March 2007; "Changing Korea and Korean-Canadian Lawyers" for the Korean Law Student Association at Osgoode Hall Law School, February 2007.

Janine Benedet presented a Centre for Feminist Legal Studies lecture entitled "Prostitution and the Harms of Harm Reduction," November 2007, UBC Law.

Ljiljana Biukovic presented "Selective Adaptation and Treaty Compliance in International Trade" at a Lauterpacht Centre for International Law workshop, Cambridge, UK, July 2007; and to the Law and Society Conference, Humbolt University, Berlin, July 2007; presented "Dispute Resolution Strategies in Trade Agreements Endorsed by the European Union" to the European Union Studies

Association (EUSA) Tenth Biennial International Conference, Montreal, May 2007; chaired a panel on "National Interests and Doha" at the Trading Cultures: Trade Policies After Doha Workshop, UBC, March, 2007.

Susan Boyd presented "Marriage of Naught? Re-inscribing a Distinction Between Marriage and Unmarried Cohabitation in Canada" at a workshop for the Oñati Institute for the Sociology of Law, Oñati, Spain, April 2007; presented "Law Reform for Lesbian Mothers" at Conference Mothering in Law: Defending Women's Right in 2007. National Association of Women and the Law, University of Ottawa, May 2007 (with F. Kelly).

Cristie Ford chaired two sessions and presented "Taking Context Seriously: Principles-Based Securities Regulation as New Governance Regime" at the Law & Society Association Annual, Berlin, July 2007; "Bias, Independence and Impartiality in Administrative Law" at Administrative Law in Context: A New Textbook Symposium, University of Toronto, June 2007; "New Research: An Empirical Investigation into Securities Law Remedies" at the Western Canadian Emerging Scholars Incubator Workshop, Vancouver, April 2007; keynote speech "Principles-Based Securities Regulation: A New Paradigm?" at the Farris Lecture, UBC, April 2007; "Discursive Remedies in Securities Law Enforcement: An Empirical Project" as part of the National Centre for Business Law Speaker Series, UBC, April 2007.

Shi-Ling Hsu presented "Litigating Canada-US Transboundary Harm: International Environmental Lawmaking and the Threat of Extraterritorial Reciprocity," June 2007 at Harvard Law School, Cambridge, MA. Co-authored with Austen Parrish.

Shigenori Matsui presented "The Rehnquist Court and Federalism" at a conference of Comparative Law Association at Hokkaido University, Japan, June 2007; presented "Introduction of the Law School System in Japan" at a workshop on Practice-Oriented Legal Education: Comparative Research on the Legal Clinic, Internship, Externship, and Continuing Education in Canada, USA, UK and Japan at Korea University, Seoul, Korea, June 2007.

Robert K. Paterson addressed the British Branch of the International Law Association (ILA) May 2007; attended the Annual Meeting of the ILA Committee, May 2007; taught the course "Cultural Property and Art Law" as part of the Intellectual Property Law Summer Program of the Institute of Intellectual Property and Technology Law, St. Peters College, Oxford University.

Janis Sarra presented "A Comparative Analysis of the Treatment of Social Claims across Multiple Jurisdictions" at the International Insolvency Institute and Fordham Law School Annual Conference, New York, June 2007; "Cross-Border Treatment of Related Corporate Entities" at the Seattle University School of Law Corporate

Law Conference, June 2007; "Crossing the Finish Line, A Comparative Analysis of Cross-Border Insolvency Measures, Canada, the European Union and the United States" at the Academics Conference on Insolvency Law Research, Canadian Government Office of Superintendent of Bankruptcy, March 2007; and "Maidum's Challenge, Corporate Groups and Pyramidal Capital Structures in Cross-Border Insolvency" as part of the INSOL Academics Forum, Cape Town, South Africa, March 2007.

Claire Young discussed "*What's Sex Got to Do With It?: Fiscal Policy and Spouses*" during a workshop at the Oñati Institute for the Sociology of Law, Oñati, Spain, April 2007; presented a Centre for Feminist Legal Studies lecture "The Gendered Impact of Funding Pensions Through Tax Expenditures," October 2007, UBC Law.

Margot Young presented "Guaranteed Annual Income: A Feminist Perspective" at the Oñati Institute for the Sociology of Law, Oñati, Spain, April 2007; organized and facilitated the workshop "Claiming Social and Economic Rights in Canada" under the auspices of the Social Rights Accountability CURA project.

W. Wesley Pue presented and sat on the panel "'Baby Law Schools' and 'Cop Shops': Is this who we are?" at the Annual Conference of Consortium of Undergraduate Law and Justice Programs in Toledo, Ohio, June 2007; presented keynote speech "Civilizing the Wild Places in Britain & Canada: Lawyers and their Courts" at the British Association of Canadian Studies, Legal History Conference, Canada House, London, June 2007.

Grants and Awards

Benjamin Perrin is among 17 Canadians selected for the Action Canada Fellowship (2007-2008). Perrin, who recently joined the UBC Faculty of Law as an Assistant Professor, receives \$20,000 and will participate while at the Faculty in a 10-month project focused on Canadian foreign policy issues. The University of Calgary also recognized Professor Perrin by awarding him the Internationalization Achievement Award (Alumni category).

Cristie Ford received a \$20,000 grant as part of the TSX Group's Capital Markets Initiative grant to the National Centre for Business Law. Ford will engage in collaborative empirical research on novel securities remedies in the United States and Canada, with her co-investigator, David Hess of the University of Michigan's Ross School of Business.

Other Faculty News

Ljiljana Biukovic is currently a member of the Planning Committee for the International Association of Law Schools (IALS) Conference "The Law of International Business Transactions: A Global Perspective" to be held in Hamburg, Germany from April 10-12, 2008.

John Kleefeld was accepted as a member of the Western Canada Society to Access Justice and was appointed to the Board of Directors on August 30, 2007.

W. Wesley Pue's appointment to serve as Vice Provost and Associate Vice President Academic Resources has been approved by the Board of Governors. Professor Pue served in a *pro tem* capacity from February 1, 2007, under the then-Provost *pro tem*, George Mackie.

In Memoriam

It is with deep regret that we announce the passing of DR. RICHARD V. ERICSON on October 2, 2007. Dr. Ericson was an eminent scholar, making significant contributions to the fields of Sociology, Criminology and Law. He acted as Director of the Centre of Criminology and Professor of Criminology and Sociology at the University of Toronto before coming to UBC in 1993. From 1993 to 2003, Dr. Ericson was a Professor of Law and Sociology at the University of British Columbia. He made critical contributions to knowledge in areas as diverse as young offenders, police work, crime reporting by the media, risk and regulation, and insurance and governance.

Dr. Ericson held various visiting positions at Cambridge, University of Paris X, and Arizona State University. He was also a fellow of the Royal Society of Canada and a Canada Council Killam Research Fellow from 1998-2000.

In 1993, Dr. Ericson established Green College. The development of this dynamic environment for scholars to share ideas, enjoy friendship and collaborate in academic pursuits was, he felt, his greatest contribution. He became an integral part of College life as its first Principal, and resided at Green College with his wife and son until 2003. He is survived by his wife of 38 years, Diana, son RCMP Constable Matt Ericson (LeeAnn), brother John (Joyce) and sisters Elizabeth and Kristine (Shabaz).

In recognition of his accomplishments, Green College has established the Richard V. Ericson Lecture Series fund to provide aspiring academics with support and encouragement. Donations to this fund can be directed to Green College.

Richard's integrity, dedication and intellectual leadership will be sorely missed by the academic community.

UBC Law is attended by intelligent, interesting and active students. Many of these students are recognized with academic scholarships, awards and prizes. In addition, students enjoy a vibrant social network of activities and events.

The following is a sample of the recent accomplishments of some of our students.

First Nations Legal Studies Program Golf Tournament

The first Annual UBC Law—First Nations Legal Studies Program Golf Tournament & Fundraiser took place at the Musqueam Golf & Learning Academy in July. A number of alumni attended the tournament, including lawyers from Mandell Pinder, McDonald & Co., Boughton & Co., and Donovan & Co. A number of organizations, firms and individuals donated prizes, including: Blake, Cassels & Graydon LLP, Robert Bateman, Vancouver Police Department, Merrill W. Shepard, Canadian Broadcasting Corporation, Musqueam Golf & Learning Academy, Michael McDonald, and Score Golf Canada's *Golf Magazine*. UBC Law and Mark Eikland generously sponsored students and recent grads to play in the tournament.

Canadian Constitutional Affairs Conference

Six students represented UBC Law at the Canadian Constitutional Affairs Conference in Quebec City in January 2008. **Esteban Kahs-Garay, Jeff Yuen, Anna Turinov, Karn Manhas, Ted Murray and Laura Hodgins**

will debated and discussed the evolution of the Canadian Constitution. This conference marked the 400th anniversary of the founding of Quebec City and under the guidance of the honorary chair Rt. Hon. Brian Mulroney featured distinguished guest speakers such as Hon. Bob Rae, Hon. Bernard Landry, Eddie Goldenberg and Tom Flanagan.

CBA Mentorship Program Reception

The 2007 CBA Mentorship Program, jointly sponsored by the Canadian Bar Association and the UBC Faculty of Law Career Services Office, culminated in the CBA Mentorship Program Reception held at the Law Courts Inn on October 25. Two students received CBA Awards for outstanding academic achievement and community service. **Jennifer Lau** received the CBA BC Branch Scholarship and **Jennifer O'Leary** was the recipient of the CBA Finance Services Award. The Career Services Team would like to thank Shane Hopkins-Utter, the CBA Representative on the Articling Committee, all of the lawyers who volunteered to be mentors and everyone who contributed to the success of the Mentorship Reception.

Law Students' Society

The UBC Law Students' Society (LSS) is the official voice and government for UBC Law students. The LSS also facilitates and funds student sport teams and clubs and organizes a variety of social events. Some of the activities sponsored and/or coordinated with assistance from the LSS in 2007 include:

- First year orientation week
- Pro Bono Students of Canada "Welcome Back Party"
- Annual Salmon BBQ, sponsored by Borden Ladner Gervais LLP
- The first year students also took part in making sandwiches, which they distributed in Vancouver's Downtown Eastside.
- Annual Boat Cruise sponsored by McCarthy Tétrault LLP
- Reception and open mic in Candida's organized by the Outlaws and sponsored by Harris & Company

Individual Awards and Accomplishments

BLAKES SCHOLAR

The Blake, Cassels & Graydon scholarship was awarded to **Graham Kosakoski**. This scholarship is awarded to a student who has completed first year with high academic standing. The scholarship is renewable after second year if a high academic standing is maintained. In addition to academic achievement, award criteria includes community involvement, extra-curricular activities and personal accomplishments.

MCCARTHY TÉTRAULT LEADERSHIP AWARD

The McCarthy Tétrault Leadership Award was given to **Angela Escobar** and **Brenda Belak**. This award is given to two students who have high academic standing and have embraced leadership roles at the University or in their community.

ROBERT S. REID AWARD IN LAW

Ashleigh Keall is the recipient of this award, which is endowed by friends and colleagues in honour of Robert (Bob) S. Reid's many years of service to UBC's Faculty of Law and his contributions to the legal community in Vancouver.

BORDEN LADNER GERVAIS LLP PROFESSIONAL EXCELLENCE AWARD

Eileen Keast and **Aileen Smith** received Borden Ladner Gervais LLP Professional Excellence Awards. Borden Ladner Gervais offers the award to full-time law students completing first year who demonstrate academic excellence and a commitment to professionalism and service.

BORDEN LADNER GERVAIS LLP RESEARCH FELLOWSHIP RECIPIENTS

Shea Coulson and **Graham Kosakoski** are the 2007 recipients of the Borden Ladner Gervais fellowships. The fellowships fund two students to work with members of the Faculty for four months over the summer.

Shea Coulson graduated from the University of Toronto in 2003 with a B.A. (Honours) in English. He earned a Master's in Theory and Criticism at the University of Western Ontario in 2005. Shea will work with Dr. Douglas Harris on social, theoretical and Aboriginal issues in property law through case studies on Vancouver's False Creek.

Graham Kosakoski received his B.A. from Queen's University where he studied psychology and theatre and was awarded the 2004 Queen's Gold Medal for top graduating student. He is currently co-authoring a study on children's learning disabilities. Graham will work with Professor Judith Mosoff on a project investigating the possibility of a specialized BC mental health court.

UBC LAW STUDENT FINALIST FOR THE 2007 GOVERNOR GENERAL'S LITERARY AWARD

Among the 1,417 books nominated for a 2007 Governor General Award was the non-fiction work "Enter the Babylon System: Unpacking Gun Culture from Samuel Colt to 50 Cent" co-authored by UBC Law student **Christian Pearce**. Pearce is Editor-In-Chief and co-owner of the award-winning *Pound* magazine, which explores issues of urban culture. Numerous members of the UBC community assisted with research for the project, including Professors Joel Bakan, Jon Festinger and Mary Ainslie.

Graduate Student Updates

2007 JOHN PETERS HUMPHREY STUDENT FELLOWSHIP

Gerardo J. Munarriz received the 2007 John Peters Humphrey Student Fellowship in International Human Rights Law and Organization. A human rights lawyer, Munarriz has worked with international human rights organizations for over ten years, including Defense for Children International and the Inter-Church Committee on Human Rights in Latin America. He completed his B.A. (Honours) degree at York University, LL.B. degree at San Marcos University in Lima, Peru, and LL.M. degree at Osgoode Hall Law School, York University. His Ph.D. work at UBC centres on international human rights law and indigenous peoples.

SSHRC CGS SCHOLARSHIP FOR 2007

Three Ph.D. students were awarded the prestigious SSHRC CGS Scholarship for 2007, valued at \$35,000.00 for 36 months. The SSHRC Doctoral Fellowships and the CGS Doctoral Scholarships programs aim to develop research skills and assist in the training of highly-qualified academic personnel by supporting students who demonstrate a high standard of scholarly achievement in undergraduate and graduate studies in the social sciences and humanities.

Michael Begg completed his B.A. and LL.B. at UVic in the

1990s, after which he worked for various non-profit arts and environmentalist groups, and spent five years as a manager in the BC government working with First Nations. He is now completing his LL.M. thesis at UBC Law on the legislative history of land management in British Columbia.

Michael Cody has an LL.B. (UWO) and LL.M. (UBC). His Ph.D. work at UBC explores the application of the social theory of the corporation to Canada and Canadian corporate law. He has worked as a corporate associate at a large Canadian law firm and has been the General Counsel or in-house counsel of three publicly traded companies.

Shauna Labman holds a SSHRC CGS Master's Scholarship and is completing her LL.M. Her research at UBC focuses on refugee resettlement policy from both a Canadian and international perspective and flows out of earlier work at the United Nations High Commissioner for Refugees in New Delhi, India and with the Canadian Embassy in Beijing, China. She holds a B.A. from UBC, received her LL.B. from the University of Victoria and is a member of the Law Society of Upper Canada.

UBC GRADUATE STUDENT MIGRATION ESSAY

Shauna Labman, winner of the UBC Graduate Student Migration Essay prize, will travel to Cairo in January 2008 to attend the International Association for Forced Migration Studies

Conference. Hosted by the IASFM, the conference brings together academics, practitioners and decision-makers working on forced migration issues.

PUBLICATIONS

Richard Frimpong Oppong, "Private International Law in Africa: The Past, Present and Future" (2007) 55 *American Journal of Comparative Law* 677; "Mere Presence and International Competence in Private International Law" (2007) 3 *Journal of Private International Law* 321; "Canadian Courts Enforce Foreign Non-Money Judgments" (2007) 70 *Modern Law Review* 670.

Wenwei Guan, "The Poverty of Intellectual Property Philosophy" *Hong Kong Law Journal* (in press).

Ibironke Odumosu, "Locating Resistance in the International Law on Foreign Investment" (2008) 10 *International Community Law Review* (forthcoming); "The Law and Politics of Engaging Resistance in Investment Dispute Settlement" (2007) 26 *Penn State International Law Review* (forthcoming); "Revisiting NGO Participation in WTO and Investment Dispute Settlement: From Procedural Arguments to (Substantive) Public Interest Considerations" (2006) 44 *Canadian Yearbook of International Law* 353; "Re-Constructing the International Law on Foreign Investment: The Third World and ICSID in the 21st Century" in James Gathii ed., *The Third World and International Law: Conference Proceedings* (BRILL: 2008) (forthcoming).

AWARDS AND DISTINCTIONS

Arthur Close, QC ('69) was awarded the CBABC President's Medal in recognition of his exceptional 37-year career and his remarkable dedication to law reform.

Maurice Copithorne, QC ('56) received the 2007 John E. Read Medal. Bestowed by The Canadian Council on International Law, the medal commemorates the life and work of John E. Read, a distinguished member of the International Court of Justice.

Vancouver lawyer **Margaret Ostrowski, QC** ('79) received the Canadian Bar Association's (CBA) 2007 CBA Touchstone Award for her accomplishments in promoting equality in the Canadian legal profession.

Professor Copithorne (right) with UBC President **Stephen Toope** at a dinner celebrating his receipt of the John E. Read medal.

Ostrowski, a member of the Canadian Immigration and Refugee Board, received the award in recognition of her efforts in supporting equality and opportunities for women lawyers in British Columbia.

On October 1, **Steven Point** ('85) was sworn in as Lieutenant Governor of British Columbia. Mr. Point, a former provincial court judge and grand chief of the Sto:lo Tribal Council, is the 28th Lieutenant-Governor of the province.

Margaret Ostrowski



2008 & 2009 EVENTS

The **Class of 1988** has planned a Reunion for **May 2** at the Vancouver Club that promises to be an exciting event.

The **Class of 1978** will have a reunion on **May 24** and the **Class of 1973** will have a reunion on **June 14**. Both will be held at Sage Bistro at UBC.

UBC ALUMNI WEEKEND 2008

Reconnect with your alma mater **May 23-25, 2008**. Alumni weekend is moving to May, and will still offer lots of great events including receptions, open houses, BBQs, tours, classes without quizzes, athletic events, family events and more!

Mark **Friday, June 6, 2008** on your calendars for a **UBC Law School Murder Mystery Dinner**. This will be an opportunity to mix and mingle with Law School alumni and others ... and to collaborate to solve a series of mysterious events.

Members of the **Class of 1969**, save the date for your 40th Reunion! Plan to spend the weekend of **June 11-13, 2009** in Kelowna catching up with your old classmates.

For details on these events, or if you are interested in planning a reunion for your class, please call the Faculty's alumni coordinator at 604-827-3612.

RECENT APPOINTMENTS

The Faculty would like to congratulate the following alumni on their much deserved appointments:

BRITISH COLUMBIA COURT OF APPEAL

The Honourable David S. Frankel
The Honourable David Tysoe

SUPREME COURT OF BRITISH COLUMBIA

The Honourable Bruce Butler
The Honourable
Christopher Hinkson

PROVINCIAL COURT OF BRITISH COLUMBIA

The Honourable Allan Betton
The Honourable Elisabeth Burgess
The Honourable Maria
Francesca Giardini
The Honourable Stephen Harrison
The Honourable Maris
Rae McMillan
The Honourable Josiah Wood
The Honourable Thomas Woods

UBC LAW CAREER SERVICES

The Career Services Office serves UBC Law alumni, too! We circulate postings for law firms and organizations interested in hiring UBC Alumni as associates or in other legal roles. To be added to the alumni employment email list or to post a job, please contact Director of Career Services Kaila Mikkelsen at mikkelsen@law.ubc.ca or 604-822-6350 or Associate Director of Career Services Kerry Parker Smith at parkersmith@law.ubc.ca or 604-827-5052.

ALUMNI EVENTS



Wally Lightbody, QC, Dean Bobinski, Bill Thiessen and David Rush at the Kelowna Reception.



L-R: Joni Worton, Dean Bobinski, Nicholas Tsoi, the Hon. Mike Harcourt, Warren Wilson, QC, Brian Higginson, Matthew Debock at LSLAP 40th anniversary.



The Class of 1949 reunion luncheon.



Drew Lawrenson (Class of 2004) breaks a tackle for additional yards at the annual Alumni Rugby Game.

RECEPTION FOR RETIRED ALUMNI AND EMERITUS PROFESSORS

On November 1, over 30 alumni from the classes of 1948 to 1963 and UBC Law Emeritus Professors gathered for a special reception. It was an opportunity for Dean Mary Anne Bobinski to meet with a lively group of UBC Law alumni and reminisce about the early days of the law school, as well as talk about current developments in the Faculty.

KELOWNA ALUMNI RECEPTION

Walley Lightbody, QC and Grant Shirreff hosted Dean Bobinski at a reception for UBC Law Alumni in the Okanagan on June 11. The Kelowna Golf and Country Club was buzzing

as alumni reconnected and shared stories. The Okanagan's growth potential and lifestyle options attract many UBC Law graduates.

HONG KONG ALUMNI DINNER

On June 28, Dean Bobinski joined alumni working in Hong Kong for a discussion about the Faculty's Asia Pacific programs and to reminisce about the venerable Curtis Building.

LSLAP REUNION

2007 marked the 40th Anniversary of the Law Students Legal Advice Program, which provides free legal advice and representation to low income clients through its many clinics in Greater Vancouver. Many alumni remember LSLAP fondly and speakers at the September 12

reception included former premier Mike Harcourt ('65) and the chair of the Law Foundation Warren Wilson, QC ('67).

CLASS OF 1949 REUNION

On September 13, the second class to graduate from UBC Law gathered to mark the 58th year since their law school graduation. Memories, laughter and toasts abounded as attendees shared the stories of their remarkable lives and looked forward to the future.

ALUMNI RUGBY GAME

The annual rugby test that pits a team of alumni against the current law student rugby team was held at Wolfson Field at UBC on September 23. The alumni were unable to hold onto their early lead and lost by a score of

35-27. Standout players for the alumni squad included Prentice Durbin ('05), Grady Tyler ('07), Scott McCann ('02) and man-of-the-match Adam Munnings ('05).

CLASS OF 1957 REUNION

The UBC Law Class of 1957 celebrated its 50th anniversary on Saturday, September 29, 2007 at the Vancouver Lawn and Tennis Club. They noted their distinctions of being the smallest UBC Law class ever, but with the largest percentage of female students of all the nine previous years and for fifteen years after, plus the usual number of Chief Justices, Judges, Benchers, Law Professors and QCs. Seventeen members and ten spouses attended, the most remote coming all the way from Bermuda. (Submitted by Jim MacIntyre, QC.)

UBC LAW ALUMNI ASSOCIATION

By Kat Kinch, Class of 2004

The UBC Law Alumni Association's main event of the autumn, the Distinguished Speakers Fall Lunch, took place on November 27, 2007 at the Four Seasons Hotel. We were delighted to host Mr. Brian Burke as this year's speaker. Mr. Burke is well known for his tenure as past General Manager of the Vancouver

Canucks, and is presently GM and Executive Vice-President of the Anaheim Ducks (who took home the Stanley Cup on his watch last year).

What you may not know about Mr. Burke: he has a law degree and MBA from Harvard, and served as an adjunct professor at UBC's Faculty of Law, teaching

the sought-after Sports Law course. His address at the Fall Lunch gave the Lower Mainland legal community his view on a controversial topic: Will a Canadian team ever win the Stanley Cup again?

Plans are now in full swing for the 2008 Law Alumni Achievement Awards. Nominees

are named in the various annual categories: the Alumni Award of Distinction, the Alumni Award for Research, and the Outstanding Young Alumnus/Alumna Award.

Past winners and further information are posted at: <http://www.law.ubc.ca/alumni/association/awards.html>.

CLASS notes

Keep in touch with your classmates! Send in your updated news either by visiting our website at www.law.ubc.ca/forms/class_notes/notes.html and filling in the online form, or by mailing your news to CLASS NOTES, UBC Law Alumni Magazine, 1822 East Mall, Vancouver, BC, V6T 1Z1.

Your submission will be included in the next issue of the *UBC Law Alumni Magazine*.

50s

Constance Isherwood ('51), the first female student to receive the UBC Law Faculty's gold medal in 1951, was the 2006 recipient of the Distinguished Alumni Award for Lifetime Achievement from the University of Victoria Alumni Association. In 1964, she established a law office on Vancouver Island with her husband, Foster Isherwood, that continues to offer clients services in civil law, wills, estates, land transfers, mortgages, easements, rights of way, family law and corporate law. She is an honorary member of the Victoria Bar Association, volunteers with community groups including the Family and Children's Service of Victoria and the Vancouver Island Women's Business Network, and has served as Chancellor of the Anglican diocese of British Columbia for over two decades.



CONNIE ISHERWOOD

60s

David Anderson ('62) writes that he retired from politics in 2006, and is currently President of the World Fisheries Trust and a member of the Alcan jury to award a \$1-million prize for sustainability. In October, he was inducted into the Victoria Sports Hall of Fame and in November received an honorary LL.D. from the University of Victoria.

Peter W. Brown ('63) was recognized with the 2006 Kitsilano Chamber Lifetime Achievement Award for his dedication and commitment to community organizations, including past service as president of the Kitsilano Chamber of Commerce and the UBC Law Alumni Association. He is currently the president of the Brock House Society and a Director at Large of the BC Chamber of Commerce.

Josiah Wood ('67) QC has been appointed to the bench of the Provincial Court of British Columbia. He left a successful criminal practice at Dowding, Deverell, Harrop & Wood LLP to serve as a Justice with Supreme Court of BC in 1983 and the BC Court of Appeal from 1989 to 1996. He had been practising with Blake, Cassels & Graydon LLP before his return to the bench.

Alastair Lucas ('68) QC has been appointed to the position of Dean of the Faculty of Law at the University of Calgary, after serving as Acting Dean in the Faculty since 2006. He maintains an active research portfolio focused in the areas of

domestic and international energy and environmental law, and continues to be involved with the Canadian Bar Association and the North American Commission for Environmental Cooperation. In addition to his administrative responsibilities and his role as professor and Chair of Natural Resources Law, he has served as an adjunct professor of environmental science in the Faculty of Environmental Design and coordinator of the graduate program in Natural Resources Energy and Environmental Law. He is also an active member of the Law Society of Alberta and consults on a number of Canadian energy and environmental boards on matters of administrative law, natural resources law and environmental law.

70s

Lyall Knott ('72) QC, a Senior Partner if the Business Law Department at Clark Wilson LLP in Vancouver, has been appointed Chair of the Rick Hansen Foundation. The Foundation works to create more accessible and inclusive communities for people with spinal cord injury and supports the search for a cure.

Maria Francesca Giardini ('74) has been appointed a Judge of the Provincial Court of British Columbia.

Judge Vince Hogan ('74), Provincial Court of BC, is now a sitting Judge in Kelowna after 30 years in practice and as a Judge in Prince George.

Terry LaLiberté ('74) QC was appointed to the Police Board in 2005. He is past President of the Canadian Bar Association (BC); a bencher of the Law Society of BC; a member of the Judicial Council of BC; a member and past Vice-Chair of the Native Courtworkers Board of Directors; a member of the Trial Lawyers Association Board of Directors;

co-founder and past Chairman of the Lawyers Benevolent Society; and a member of the International Society for reform of the Criminal Code. Mr. LaLiberté has been a standing agent for the Department of Justice for 15 years and the ad hoc Provincial Crown for most of the central coast (Alert Bay, Bella Bella and Bella Coola) for over 12 years.

Parker MacCarthy ('74) QC recently completed his term as the National President of the Canadian Bar Association for 2006-2007. Appointed Queen's Counsel in 1997, he has also received the Queen's Jubilee 50 Year Medal for his contributions to the legal community, to the development of law and to the administration of justice in Canada.

80s

Anita F. Boscaroli ('82) is the new Executive Director of The Federal Treaty Negotiation Office (FTNO) in BC. FTNO represents all Canadians and federal departments and agencies in the negotiations of comprehensive claims by First Nations in BC. The goal of the BC treaty process is to build new relationships with First Nations, achieve certainty over ownership and use of land and resources, and enhance economic opportunities for First Nations. Anita's husband, **Celso Boscaroli** ('82) continues to practice law as a partner of Watson Goepel Maledy LLP in Vancouver.

Elisabeth Burgess ('82) QC has been appointed to the bench of the Provincial Court of British Columbia. She has practised with the Ministry of Attorney General for 23 years, 11 of those as a Crown Prosecutor prior to becoming the Director of Special Justice Programs, Aboriginal Justice and Environmental Prosecutions.

She became the Director of Legal Operations and Justice Programs in 2001 and served as Executive Director of the Criminal Reform Office between 2004 and 2006.

Richard Rogers ('87) was recently appointed Deputy Registrar with BC Registry Services, with responsibility for the Corporate, Manufactured Home and Personal Property Registries. He moved to the position after three years in the Ministry of Attorney General as Director, Legislation and Law Reform in the Administrative Justice Office.

George Tacik ('87) has retired after 20 years as a staff lawyer with Legal Aid Manitoba in Winnipeg and is thinking of moving to a warmer climate.

Thomas Woods ('87) has been appointed to the bench of the Provincial Court of British Columbia. Woods was a partner at Lawson Lundell LLP, practising in the area of civil litigation. He was also the editor of *The Advocate*, a bi-weekly legal journal, for the last 11 years. In 2006, he was awarded the Law Alumni Association's Award of Distinction.

Regular Members of the RCMP in 1974, Busson has been actively involved in community, justice and student programs. Her contributions have included work with the Aboriginal Cadet Program, the establishment of Canada's first undergraduate degree in Criminal Investigation at the University College of the Fraser Valley and the establishment of BC's highly touted Organized Crime Agency. Busson was awarded the RCMP Long Service Medal for 30 years of Good Conduct, the Queen's Golden Jubilee Medal and the Canadian Forces Vice Chief of Defence Staff Commendation for her support of the Canadian Cadet Movement. In 2004, she was invested as a Commander of the Order of Merit of the Police Forces and also received an Honorary Doctorate of Laws from the University College of the Fraser Valley. She was awarded the Order of British Columbia in 2006.

Mitchell Leitman ('92) extends greetings from Ottawa, where he practises in a small firm named Merovitz Potechin. He has two beautiful daughters, Alexa and Ava, and is married to Sherri Katz.

Cathy Rizzo ('93) continues to practise law at the law firm Simpson Thomas and Associates in the area of personal injury. She and husband Ben Taddei welcomed with great joy the birth of their child Giorgia Rizzo Taddei on August 26, 2006.

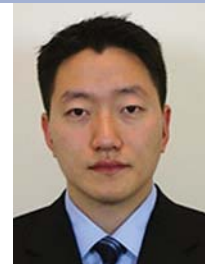
Blair Jordan ('97) writes, "It's great to see some of my classmates beginning to show up on the alumni pages—although maybe that means we're getting old! After graduating from UBC Law, I practised securities law with Bennett Jones LLP in Calgary before leaving the practice of law (and Canada) in 2000. Following an MBA at the University of Chicago, we moved to London where I joined current employer, Credit Suisse Group. We lived in London for about four years, and then transferred to New York in 2005, shortly after the birth of our son, Kazuki. After a couple of years in New York, we realized we needed to be closer to family.



LEO AND TANIA PAQUIN



MICHAELA SMITH



WILLIAM PAK

2000s

Although the call of Vancouver was strong, a great opportunity with Credit Suisse Tokyo came up, and earlier in 2007, we relocated to Tokyo—this time with an eye to settling down. I've worked in a number of Credit Suisse businesses globally from distressed debt to convertible bond trading, but am now enjoying building a Special Situations investing and trading team in Asia for Credit Suisse."

Kyla Henriksen ('98) has moved to New York where she is working as a derivatives lawyer. This move follows an LL.M. in international economic law at Georgetown University in Washington D.C. and a stint as counsel at Finance Canada in Ottawa.

Matthew Westphal ('99) has left the practice of law, with no regrets, and has returned to UBC with a view to becoming a high school teacher. He married Erin Hardy on July 18, 2007 in New York City. He may be reached at mattwestphal@hotmail.com.

Leo Paquin ('01) is delighted to share the news that he was married to the truly amazing Tania Nunez Burgos on August 9, 2007 at Cecil Green Park House.

Warren Smith ('03) and Andrea Smith are delighted to announce the arrival of their daughter Michaela Elizabeth Smith on August 6, 2007. Warren is the current Regional Director, BC, for The Counsel Network.

William Pak ('04) is happy to report that he is having a great experience at his new job in New York City. He is now an associate at White & Case LLP in New York in the Investment Funds group. His primary focus is on the establishment and representation of private investment funds including both United States and offshore international private equity and hedge funds.

Elin Sigurdson ('05), after clerking at the Court of Appeal of British Columbia and finishing her articles at Fasken Martineau Dumoulin, has joined Arvay Finlay.

In Memoriam

Frank Drinkwater Lawrie

A member of the first graduating class from UBC Law, Frank Drinkwater Lawrie passed away in 2007. As a young lawyer, Lawrie first worked in Kelowna BC, and later moved into a banking career in Southern California. He retired as Vice-President of First Interstate Bank in 1982 and is survived by his loving wife of 55 years, Eva Joanne Lawrie; his sons Frank Davidson Lawrie (Stephanie Allison) and Steven Clark Lawrie; and sister, Margaret Groom. He was predeceased by his son, Douglas James Lawrie, in 1989.

90s

Beverley Ann Busson ('90) OCM, OBC has been appointed to the Advisory Council on National Security (ACNS) by Prime Minister Stephen Harper. This appointment follows a distinguished career in law enforcement culminating in her rise to the position of Commissioner of the Royal Canadian Mounted Police. Since her membership in the first class of women to become

BEVERLEY BUSSON



Closing ARGUMENTS!

Louis Collinson, Terri-Lynn Williams-Davidson's ('95) paternal grandfather, and the previous hereditary chief of Skidegate, made this speech at the opening of their community hall. It has been relied upon for the approach the Haida Nation has taken regarding forestry, and was also presented to both the BC Supreme Court and the BC Court of Appeal in the *Haida* case.



People are like trees,
and groups of people are like the forests.

While the forests are composed of many different kinds of trees,
these trees intertwine their roots so strongly
that it is impossible for the strongest winds
which blow on our islands to uproot the forests.

For each tree strengthens its neighbour,
and their roots are inexplicably entwined.

Just as one tree standing alone
would soon be destroyed by the
first strong wind which came along,
so is it impossible for any person,
any family, or any community
to stand against the troubles of this world.

LOUIS COLLINSON
Chief Skidegate



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